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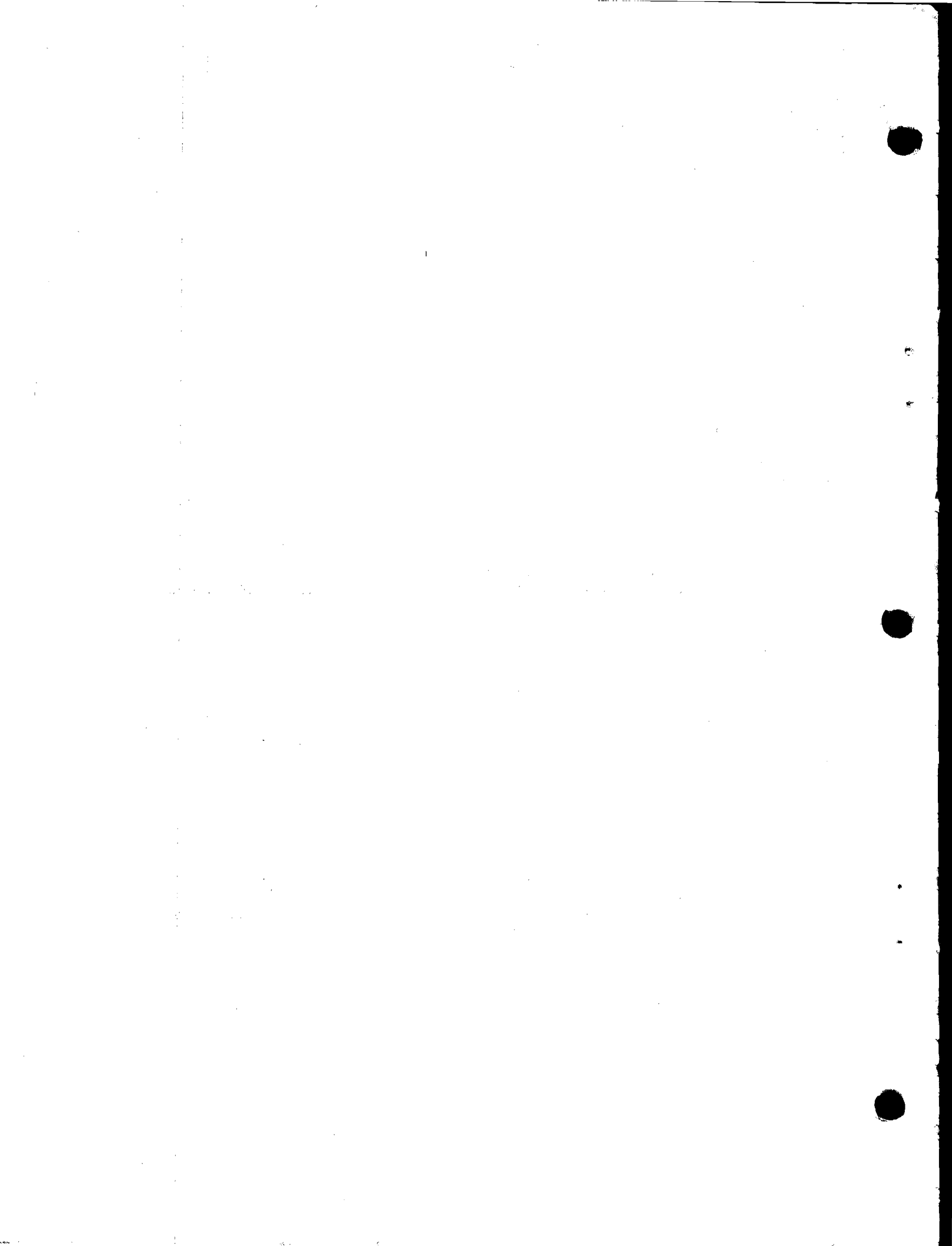
SECNAVINST 1850.4A
30 MARCH 1982

Disability Evaluation Manual 1982



NAVAL COUNCIL OF PERSONNEL BOARDS
DISABILITY EVALUATION SYSTEM
ROOM 905 — 801 NORTH RANDOLPH STREET
ARLINGTON, VA 22203

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DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

SECNAVINST 1850.4A
NCPB

30 MAR 1982

SECNAV INSTRUCTION 1850.4A

From: Secretary of the Navy

Subj: Physical disability evaluation within the Department of the Navy

Ref: (a) 10 U.S.C. chapter 61 (1976), as amended

1. Purpose. To define a system for the evaluation of physical disability and the directives and policies pertaining to it; to authorize certain elements of the system to issue decisions; to assign all elements clear responsibilities in support of the delegation of the discretionary authority of the Secretary; to define the organizations and principal procedures by which the responsibilities will be performed; to delineate procedures for oversight of the system performance within the Department of the Navy and to promulgate enclosure (1) which is a complete revision of previously issued instruction.

2. Cancellation. SECNAV Instruction 1850.4.

3. Background

a. Reference (a) charges the Secretary of the Navy with the responsibility for making determinations as to fitness for active duty of members of the Navy and Marine Corps, and as to their entitlement to disability benefits where found unfit.

b. The Secretary of the Navy performs his statutory responsibility by means of the Department of the Navy Disability Evaluation System. His principal agent in this regard is the Director, Naval Council of Personnel Boards. The Central Physical Evaluation Board, regional physical evaluation boards, Physical Review Council and Disability Evaluation System Counselors, together with other Navy and Marine commands and activities, comprise the Department of the Navy Disability Evaluation System.

c. Delegation of authority to exercise the discretionary responsibility of the Secretary of the Navy in making decisions pertaining to fitness for duty and entitlement to disability benefits is not prohibited by

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statutes, regulations, or long standing practice effectively relied upon by the Congress, and will contribute to the efficiency of the administration of the Navy Department, providing the fundamental interests of the government and the individual are protected.

4. Authority. The below listed elements of the Department of the Navy Disability Evaluation System are designated and directed to act on behalf of the Secretary of the Navy in making determinations as to fitness for active duty of members of the Navy and the Marine Corps, entitlement to disability benefits, and disposition of members properly referred for physical disability evaluation:

- a. the Central Physical Evaluation Board
- b. the Physical Review Council
- c. the Director, Naval Council of Personnel Boards

In carrying out their responsibilities, the officers comprising these elements shall be governed by the enclosure to this instruction.

5. Action

a. All elements of the Department of the Navy Disability Evaluation System, as defined in the enclosure to this instruction, shall act in disability evaluation matters, as prescribed in the enclosure and any subsequent modifications.

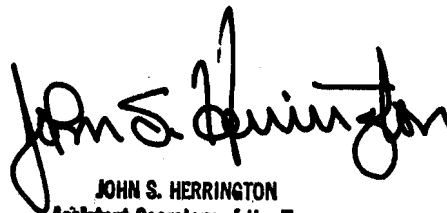
b. The Chief of Naval Operations, the Commandant of the Marine Corps, and the heads of Department of the Navy Staff Offices shall provide, as appropriate, such assistance as necessary to facilitate proper and effective evaluation of disability cases.

c. Enclosure (1) is the Department of the Navy Disability Evaluation Manual 1982.

6. Reports and Forms

a. The reports contained in this instruction are exempt from reports control by DOD Directive 5000.19 of 12 March 1976.

b. Forms stocking information is contained in Appendix H.



JOHN S. HERRINGTON
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

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		(plus 7000110 (2)
		7000112 (4)
		7000122, (2)
		7000024, (1)
		7000130 (1)
	V2	(Barracks Supporting)
	V15	(Marine Corps Districts)

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Part III

ELEMENTS OF THE DISABILITY EVALUATION SYSTEM

0301 Elements

a. Members being evaluated for fitness. Active duty, inactive reserve, and temporarily retired personnel of the Navy and Marine Corps who are undergoing evaluation as to their fitness for unlimited duty; or degree of industrial or social impairment resultant from physical disability. See Part IV.

b. Medical boards. Convened to report upon the state of health of members of the naval service referred. See Part V.

c. Commanding Officers. Convening authorities for medical boards. Act as review authorities for medical board reports. See Part VI.

*d. The Central Physical Evaluation Board, Arlington, Virginia. The initial stage at which a determination is made as to the fitness/degree of disability of a member. Evaluations are on the basis of documentary review. See Part VII.

*e. Regional Physical Evaluation Boards at Bethesda, Great Lakes, and San Diego. The second stage at which a fitness/degree of disability determination is made. Evaluations are on the basis of formal, personal hearings. See Part VIII.

*f. The Physical Review Council, Arlington, Virginia. The third stage at which a fitness/degree of disability determination is made. Evaluations are on the basis of documentary review. See Part IX.

*g. Director, Naval Council of Personnel Boards. Exercises administrative control of the Naval Council of Personnel Boards, a shore activity assigned to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) for supervision

and support. Exercises oversight of the Naval Disability Evaluation System. Performs appellate review of cases properly referred to him. See Part X.

h. The Judge Advocate General. Performs the legal review, required by 10 U.S.C. 5148, of the proceedings of boards for the examination of personnel of the naval service for promotion and retirement.

*i. Disability Evaluation System Counselors located at major regional medical centers. Provide counsel and assistance to members undergoing disability evaluation. Advise associated patient affairs offices in disability matters. See Appendix C.

j. The Commandant of the Marine Corps and the Chief of Naval Personnel. Act as personnel managers for their respective services. Establish skill requirements and performance qualifications for officer and enlisted personnel. Authorize retention in a limited duty status in special circumstances where such retention is necessary or appropriate. Advise the Secretary of the Navy and the Naval Council of Personnel Boards in matters affecting fitness for duty. Issue the travel and duty orders necessary to facilitate physical disability evaluations of members on the Temporary Disability Retired List. Provide officers and enlisted personnel of requisite experience and judgment to serve in evaluation and counseling roles within the Disability Evaluation System.

k. The Chief, Bureau of Medicine and Surgery. Directs and supervises naval medical facilities in support of the physical disability evaluation system. Establishes procedures for medical boards. Advises the Secretary of the Navy and the Naval Council of Personnel Boards regarding medical aspects in disability evaluation. Nominates Medical Corps officers of requisite education and experience to serve as members of physical evaluation and review boards/councils.

* Asterisked elements are components of the Naval Council of Personnel Boards.

Part IV

MEMBERS BEING EVALUATED FOR FITNESS

0401 General

a. No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it (10 U.S.C. 1214). The regional physical evaluation boards have been established to provide such hearings when demanded.

b. Chapter 61, U.S.C., provides that the Secretary concerned may provide, under specified conditions, disability benefits to a member who has become physically unfit to perform the duties of his office, grade, rank or rating. While his case is being processed through the Disability Evaluation System, a member has available to him certain rights to ensure that he is awarded all of the benefits to which he is entitled.

c. A member has the right to be and shall be carefully counseled, in clearly understandable language, concerning the significance of action being taken in his case, its probable effect on his future, and his rights with respect to options available to him. This counseling is the responsibility of the command to which he is attached at the time he is undergoing evaluation together with such elements of the Disability Evaluation System as are engaged in his evaluation.

d. A member who has been found mentally incompetent following disability evaluation by the Central Physical Evaluation Board has the right to be represented by a designated military counsel. This counsel shall be certified in accordance with Article 27(b), UCMJ.

e. In those cases in which it is considered by a medical board convened and constituted in accordance with 37 U.S.C. 602, as described in the Manual of the Medical Department 18-8(5), that the information contained in the medical board report might have an adverse effect on the

member's physical or mental health, such information will not be provided to the member. The member's spouse, next of kin or guardian shall be counseled as appropriate.

0402 Rights and Procedures Available to a Member Undergoing Evaluation by a Medical Board

a. The report of a medical board shall accurately describe the physical condition of the member examined. All of the member's physical impairments shall be listed and accurately described in the board report.

b. Unless the information contained therein may, in the judgment of the medical authorities, have an adverse effect on the member's mental or physical health:

(1) The member shall be allowed to read the board's report or be furnished a copy thereof.

(2) Significant findings and opinions and the recommended disposition of the report shall be brought to the member's attention.

(3) The NAVMED Form 6100/2 statement concerning the findings and disposition of the board shall be referred to the member for signature, after completion. In those cases in which it is considered that the information contained in the medical board report might have an adverse effect on the member's physical or mental health, such a statement will be made on the NAVMED Form 6100/2 and signed by members of the board in lieu of the signature of the member.

c. The member shall be given an opportunity to submit a rebuttal to any portion of the board's report. No precise format is prescribed. In general, the rebuttal shall be set forth as a statement and signed by the member or his legal representative.

0403 Rights and Procedures Available to a Member Undergoing Evaluation by the Central Physical Evaluation Board

a. The report of the proceedings and findings of the Central Physical Evaluation Board shall state an evaluation of the fitness of a member, diagnoses of any disabling conditions, and findings as to the circumstances under which any disabling conditions occurred. When the Board reports on the fitness of a member whom the Commandant of the Marine Corps or Chief of Naval Personnel has recommended be administratively removed from the TDRL, no procedural rights accrue to the member.

b. The member shall be furnished a copy of the proceedings and findings of the Central Physical Evaluation Board (NAVSO 6100/16) (Appendix H).

c. The member has the right to accept the recommended findings of the Central Physical Evaluation Board if he agrees with them.

d. If he does not agree with the action of the Central Physical Evaluation Board, the member has the right to submit a statement in rebuttal and to have the board reconsider his case. He shall be afforded fifteen days for this purpose, commencing with the date of mailing to him of a copy of the Central Physical Evaluation Board's findings or, if telephone communication through the Disability Evaluation System Counselor is effected, from the date on which the Disability Evaluation System Counselor notifies him of the findings.

e. The member who has been found unfit for duty also has the right to have his case considered by a physical evaluation board empowered to conduct formal hearings.

f. The member who has been found fit for duty may, at the time his statement in rebuttal is submitted to the Central Physical Evaluation Board, request that his case be considered by a physical evaluation board empowered to conduct formal hearings. The Central Physical Evaluation Board, if it reconfirms that the member is fit for duty, may grant the request for a hearing before a regional physical evaluation board or recommend to the Director that the request be denied. The Director, Naval Council of Personnel Boards, upon review of the case may grant the request for a hearing or deny it. The decision of the Director in any case will not be subject to appeal.

g. Following counseling as to the options open

to him, the member shall indicate his acceptance or non-acceptance of the findings of the Central Physical Evaluation Board, using NAVSO 6100/17 (Appendix H). He shall then forward his action to that board.

h. If the member fails to rebut the recommended findings of the Central Physical Evaluation Board and/or fails to demand or request, as the case may be, a full and fair hearing within fifteen days of the mailing of the Board's decision or of his notification of the findings by the Disability Evaluation System Counselor subsequent to telephonic communication, his concurrence will be presumed and the Central Physical Evaluation Board shall finalize the case.

0404 Rights and Procedures Available to a Member Undergoing Evaluation by a Regional Physical Evaluation Board

a. Subsequent to either: the member's demand for a full and fair hearing if found unfit for duty; the referral of the member's case by the President, Central Physical Evaluation Board to a full and fair hearing in the best interests of the member or government; or, the approval of the member's request for a full and fair hearing, the member has the right to:

(1) personal appearance in a formal hearing before a regional physical evaluation board unless such appearance would be injurious to his health (10 U.S.C. 1214) (Appendix B);

(2) be represented in such a hearing by counsel and during all subsequent stages of the processing until final action on his case is effected by the Physical Review Council. Military counsel will be designated in each case at no expense to the member. If the member selects civilian counsel, this shall be at no expense to the Government. Military counsel, other than those regularly assigned to the Board, shall be provided upon request only if reasonably available in the local area of the Board and at no additional expense to the Government;

(3) have access to all records pertinent to his case and to all reference material used by the boards and be afforded reasonable time to review the records before the hearing;

(4) challenge the members of the board for cause. However, the burden of establishing that cause exists rests with the member;

(5) present evidence in his own behalf;

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(6) present witnesses, records, depositions, affidavits and statements on relevant issues, insofar as practicable;

(7) question all witnesses;

(8) present arguments in his behalf;

(9) have the issues in his case decided only on evidence adduced and presented in the hearing;

(10) waive the right to personally attend a hearing, in which case he must be represented by counsel during the hearing.

b. Procedures available to the member, by which he may obtain a full and fair hearing, shall be explained to him by his counsel and, if necessary, by elements of the Disability Evaluation System present in his area.

c. The report of the proceedings and findings of the regional physical evaluation board shall state an evaluation of the fitness of a member, diagnoses of any disabling conditions, and recommended findings as to the circumstances under which any disabling condition occurred.

d. The member shall be advised by the board of its findings and shall be furnished a complete copy of the transcript of his hearing and a copy of the NAVSO 6100/16 (Appendix H).

e. Following counseling as to his situation, the member shall indicate his acceptance or non-acceptance of the findings of the regional physical evaluation board, using NAVSO 6100/17 (Appendix H). He shall file his action with the regional physical evaluation board.

f. If he does not agree with the action of a regional physical evaluation board, a member has the right to submit a statement in rebuttal and to transmit that statement to the Physical Review Council. He shall be afforded fifteen days for this purpose, to commence on mailing to him of his copy of the transcript of the hearing.

g. In addition to the fact that it may constitute a military offense, failure to appear before a regional physical evaluation board by a member who has requested such an appearance shall be considered as a waiver by a member of his right to a personal appearance unless it is reasonably shown that the failure was through no fault of the member.

h. A member undergoing physical disability evaluation may waive his right to a full and fair hearing before a regional physical evaluation board after requesting such a hearing, providing he has been counseled as to the ramifications of his decision. A member may request representa-

tion by counsel before a regional physical evaluation board in lieu of a personal appearance.

0405 Rights and Procedures Available to a Member Undergoing Evaluation by the Physical Review Council

a. The proceedings and findings of the Central Physical Evaluation Board listed in subparagraph 0706(1) and all regional physical evaluation boards shall be reviewed by the Physical Review Council. The Council shall accept the findings of the Central Physical Evaluation Board or regional board, or make substitute findings.

b. When the Physical Review Council makes substitute findings which are adverse to the member, he has the right to be notified of such findings and to file a rebuttal and have the Council reconsider his case.

c. Following counseling, the member shall, within fifteen days of the date on which the Physical Review Council substitute findings were mailed to him, indicate his acceptance or non-acceptance of the substitute findings that are adverse to him using NAVSO 6100/25 (Appendix H).

d. When the Physical Review Council makes substitute findings which are adverse to the member and he has submitted a rebuttal and, if after considering the rebuttal the Physical Review Council adheres to its proposed findings, he has the right to have his case considered by a physical evaluation board empowered to conduct formal hearings if he has not had such a hearing.

e. When the Physical Review Council makes substitute findings which are adverse to the member and he has submitted a rebuttal and, if after considering the rebuttal the Physical Review Council adheres to its proposed findings, and he has had a formal hearing, he has the right to have his case referred to the Naval Physical Disability Review Board for further consideration.

f. In all cases other than special interest cases wherein the Physical Review Council findings agree with those of a regional physical evaluation board, or are not adverse to the member, the action of the Council constitutes final disposition of the case and the member is afforded no subsequent opportunity to further his case within the Disability Evaluation System other than by means of a petition for relief from final action (paragraph 0214).

0406 Rights and Procedures Available to a Member Undergoing Periodic Physical Examination in Connection with Temporary Disability Retirement

a. Periodic physical examinations shall be administered in conformance with 10 U.S.C. 1210 (Appendix B).

b. A member will receive orders from the Commandant of the Marine Corps or the Chief of Naval Personnel via the commanding officer of the examining activity directing him to proceed and report for periodic physical examination at the designated examining facility. The orders will be endorsed by the examining facility to specify the date and time at which the member is to report. If the member is confined by civil authorities or is otherwise unable to undergo a final periodic physical examination by reason of circumstances beyond his control, the Commandant of the Marine Corps or Chief of Naval Personnel will initiate appropriate steps to obtain an acceptable current medical examination.

c. Orders shall be transmitted by regular mail.

d. In the event the member fails to report for physical examination as directed, the examining facility shall reschedule the examination and notify the member of the rescheduled date of examination.

e. A member's retired pay shall be terminated following non-compliance with two successive orders to appear for periodic physical examination.

f. A member whose disability retired pay has been terminated under the above conditions may request reinstatement of that pay, showing good cause for his failure to comply with prior orders. Applications will be transmitted to the Commandant of the Marine Corps or the Chief of Naval Personnel for decision.

g. Members who are ordered to report for a periodic physical examination are entitled to reimbursement for travel performed in connection with the orders. To obtain reimbursement, a travel claim and properly endorsed orders showing travel actually performed are required.

h. Upon completion of the periodic physical examination, and when released by the examining activity, the member may carry out the remainder of his orders. The member is responsible to respond within five working days to any correspondence received from the Central Physical

Evaluation Board, and in those cases where a full and fair hearing is demanded or requested and approved, to report for such hearing on the date and at the time specified by the Administrator of the regional physical evaluation board designated to conduct such hearing. If the member does not respond within the five working days, concurrence by the member will be assumed and the Central Physical Evaluation Board shall take final action in the case.

0407 Rights and Procedures Available to a Member Seeking relief From Final Action

a. The right of a member to seek relief from final disability evaluation action shall be limited to those grounds set forth in paragraph 0214 of this manual.

b. Request for relief on the grounds set forth in paragraph 0214 may be made by the individual concerned, by his legal representative or counsel, or by any cognizant authority of the Naval Establishment excluding the Director, Naval Council of Personnel Boards. Request will be by petition, filed within five years from the effective date of the disposition disputed, addressed to the Secretary of the Navy and forwarded to the attention of the Director, Naval Council of Personnel Boards. No particular form is required. However, the petition must set forth the grounds for requesting relief and the relief desired; and, if the petition is based upon evidence which is not on record in the Department of the Navy, the evidence upon which it is based must be forwarded as an enclosure. When discharge has been executed, application should be made to the Board for Correction of Naval Records on DD Form 149.

0408 Limited Duty Request

When he desires continuation in a limited duty status following a finding of unfitness, the member must request in writing to the Central Physical Evaluation Board or the Physical Review Council, as appropriate, that he be retained with appropriate assignment limitation. Such request may be either in the form of a brief signed statement appended to the Notification to Member of Recommended Findings (NAVSO Form 6100/17) (Appendix H) or typed on the form itself. In either case, it will be processed as a conditional accep-

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tance and the member's case will not be finalized prior to resolving the continued retention of the member with the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. If the request to be retained with appropriate assignment limitation is not approved, the member will be so advised and he may elect to request a formal hearing if he has not already had one and so desires.

0409 Disposition of Members on the Temporary Disability Retired List Following a Periodic Physical Examination

a. Title 10, United States Code, section 1210 provides that the maximum time that a member's name can be carried on the TDRL in a pay status is five years. A member's name can be removed from the TDRL at any time a report of physical examination indicates that maximum improvement has been achieved or that the disability is of a permanent nature, or that the disability is currently ratable at less than 30% for members having less than 20 years active service even though the disability is not stabilized, or that the member is fit for duty. Further, section 1210 requires that members, whose names have been placed on the TDRL, shall be given physical examinations at least once every 18 months. The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will issue appropriate orders for such examinations.

b. If, as a result of any periodic physical examination, it is determined that the disability of the member concerned has become stabilized; i.e., that no further improvement or deterioration of the disability may normally be expected within the period the member can be carried on the TDRL, one of the following recommendations as to the member's disposition will be made:

- (1) permanent retirement;
- (2) discharge with or without severance pay;

or

- (3) fit for duty.

c. In the event the member is to be retained on the TDRL, he will continue to be examined at intervals not to exceed 18 months. However, he must be finally reevaluated before the end of the five-year period when final disposition must be made of his status.

d. If his disability is ratable at less than 30 per-

cent but continues to render him unfit for duty, and if the member has served less than 20 years of active duty (and will not be entitled to retired pay or retainer pay by other provisions of law), he will be discharged with severance pay.

e. If the member has recovered from his disability to a degree that he is fit to perform his duties, the following may apply:

(1) An enlisted member of a Regular component, subject to his consent, shall be reenlisted in his Regular component; an officer in a Regular component, subject to his consent, shall be recalled to active duty and, as soon as practicable, be reappointed to the active list of his Regular component, even if this means that there shall be a temporary increase in the number of officers authorized for his grade.

(2) A member of a Reserve component, subject to his consent, will be reappointed or reenlisted, as the case may be, in his Reserve component.

0410 Reappointment or Reenlistment

a. Any such reappointment or reenlistment shall be in a rank, grade, or rating not lower than the rank, grade or rating permanently held by the member at the time his name was placed on the TDRL, and may be in the rank, grade, or rating immediately above the rank, grade or rating permanently held. For the purpose of being placed on a lineal list, promotion list, etc., the member will be given such seniority in rank, grade, or rating, or will be credited with such years of service as the Secretary of the Navy may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for the placement of his name on the TDRL.

b. An officer in a Regular component shall have his disability retired pay terminated on the date preceding his recall to active duty and his status on the TDRL terminated on the date of his reappointment on the active list.

c. An enlisted person of a Regular component shall have both his status on the TDRL and his disability retired pay terminated on the date preceding his reenlistment in the Regular component of which he was a member before being placed on the TDRL.

d. A member of a Reserve component, whether

officer or enlisted person, shall have his status on the TDRL and his disability retired pay terminated on the date preceding his reappointment or reenlistment in a Reserve component, as the case may be.

e. A member of the Fleet Reserve or Fleet Marine Corps Reserve on the TDRL who is found fit for duty shall, with his consent, resume his status in the Fleet Reserve or Fleet Marine Corps Reserve in the grade held by him when he was placed on the TDRL, or the next higher grade if considered qualified therefor in view of 10 U.S.C. 1210.

f. A member of the Fleet Reserve or Fleet Marine Corps Reserve on the TDRL who has less than 20 years service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C. chapter 61, shall be given an opportunity to request that his name be removed from the TDRL and that his status in the Fleet Reserve or Fleet Marine Corps Reserve be resumed.

**0411 Member With Less Than 20 Years
Active Duty Eligible for Fleet Reserve or
Fleet Marine Corps Reserve**

A member on the TDRL who has less than 20 years' service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C. chapter 61, shall be given the opportunity to request transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he has completed 20 years or more of active service under 10 U.S.C. 6330.

**0412 Reserve Officer or Enlisted Member
Who Has Completed 20 Years Service
Under 10 U.S.C. 1332**

A member who has at least 20 years of service computed under 10 U.S.C. 1332 and who, as a result of a periodic physical examination, is determined to be entitled to severance pay under 10 U.S.C. chapter 61, shall be given an election, instead of being separated, to request transfer to the inactive status list under 10 U.S.C. 1209 and 1335.

**0413 Disposition When Member Does Not
Consent to Reappointment or
Reenlistment**

If a member does not consent to his reappointment or reenlistment, his status on the TDRL and his disability retired pay shall be terminated as soon as is practicable.

**0414 Disposition When Member Fails to
Report for Final Periodic Physical
Examination**

If a member fails to report for final periodic physical examination, or otherwise fails to arrange for an acceptable current medical examination, unless evidence shows just cause for failure to be examined, he shall be administratively removed from the Temporary Disability Retired List on the fifth anniversary of placement on that list without entitlement to any benefits provided by 10 U.S.C. chapter 61 in accordance with DoD Directive 1332.18 of 9 September 1968 (enclosure (1) to SECNAVINST 1850.3B).

Part V MEDICAL BOARDS

0501 General

Chapter 18, Section III, Manual of the Medical Department, U.S. Navy (MANMED), sets forth instructions concerning medical boards. Pertinent parts are quoted in the following paragraphs, together with other guidance applicable to medical boards as they pertain to the Disability Evaluation System.

0502 Convening Authority (MANMED 18-7)

Commanding officers of all naval regional medical centers, all naval hospitals, the National Naval Medical Center, and the Naval Submarine Medical Center may convene a medical board upon any member of the Armed Forces. Commander in Chief, Pacific Fleet, is empowered to convene medical boards for all shore activities formerly assigned to the Commandant of the Fourteenth Naval District (*i.e.*, Hawaiian Islands and islands to the westward and southward, including Midway, Kure, Wake, Johnston, Palmyra and Kingman Reef). Medical boards may also be ordered (or convened) by the Chief of Naval Operations; Commandant of the Marine Corps; Commander, Naval Military Personnel Command; and Chief, Bureau of Medicine and Surgery.

0503 Purpose (MANMED 18-9)

The medical board serves to report upon the present state of health of any member of the Armed Forces and as an administrative board by which the convening authority or higher authority obtains a considered clinical opinion regarding physical condition of service personnel.

0504 Functions

- a. Meet when convened by proper authority;
- b. Examine members and the records of members properly referred to it;
- c. Require such records as are necessary to fulfill the board purpose;
- d. Formulate conclusions and recommendations regarding the present state of health of members referred to it;
- e. Refer to the Central Physical Evaluation Board for determination of fitness for active duty the cases of those members:
 - (1) whose ability to meet the physical requirements of active duty is questionable, and
 - (2) whose cases are not required by other directives to be referred initially to the Chief of the Bureau of Medicine and Surgery, the Chief of Naval Personnel, or the Commandant of the Marine Corps.
- f. Afford a member reported upon an opportunity to make comment regarding the board report unless inadvisable for reasons of health.
- g. Include line of duty determinations with the board report unless the report would be delayed thereby.

0505 Procedures

- a. General. A formal or specific procedure for the meeting and deliberations of the medical board is not designated. The board will observe the requirements in the Manual of the Medical Department 18-21 and this manual.
- b. Necessity for accurate medical evaluation
 - (1) Information in medical board reports must accurately describe the physical condition of a member, including the nature and extent of physical impairments. The reports must also include all available information, with adequate

documentation, of the origin, aggravation by service and other significant medical facts pertaining to the impairments observed.

(2) Medical board reports should be clearly expressed so as to be intelligible in their implications to non-medical as well as medical members of evaluation boards.

c. Referral of cases to the Central Physical Evaluation Board

(1) Medical boards shall refer for disability evaluation any member whom the boards consider to be of questionable fitness for active duty by reason of a physical impairment. A determination of questionable fitness shall be supported by objective medical data displaying the nature and degree of the impairment. Lack of motivation for performance of duty does not justify referral for disability evaluation.

(2) The mere presence of a physical defect does not in itself automatically require or justify referring a case for disability evaluation. Referral should take place only when in the opinion of the medical board the defect may materially interfere with the member's ability to reasonably fulfill the purpose of his employment on active duty.

(3) Department of Defense Directive 1332.18 (enclosure (1) to SECNAVINST 1850.3B) denotes physical impairments that are normally cause for referral of a member for evaluation within the Disability Evaluation System.

(4) Medical and dental officers are responsible to identify service members whose fitness to perform active duty is questionable.

(5) There exists no authority to omit or postpone disability evaluation of a physical impairment which renders questionable the ability of a service member to reasonably perform the duties

of his office, grade, rank or rating on active service.

(6) The medical board shall refer cases to the Central Physical Evaluation Board whenever the medical board considers that a member's fitness for continued active duty is in question.

(7) A member who is being processed for separation, or for retirement by reason of age or time in service, shall not normally be referred for physical disability evaluation. Unless previously retained on active duty in a limited duty capacity, his continued satisfactory performance up to the time of separation or retirement creates the presumption that the member is fit to continue to perform the duties of his office, grade, rank or rating.

(8) Initial enlistment and commissioning physical standards must not be confused with physical capability to perform duty. Once enlisted or commissioned, the fact that a member may later fall below initial entry standards does not require that the case automatically be referred to a physical evaluation board.

(9) Physical disqualification for special duties such as flying does not necessarily imply physical unfitness unless the disqualifying defect would also interfere with the performance of other duties. Referral for disability evaluation is appropriate only in instances where the member's ability to reasonably perform active military service is in doubt.

(10) Additional guidance on referral for physical disability evaluation may be found in DoD Directive 1332.18 which is enclosure (1) to SECNAVINST 1850.3B. Information on retention criteria is contained in Article 15-6A of the Manual of the Medical Department.

Part VI

COMMANDING OFFICERS OF MEDICAL FACILITIES AND/OR OTHER CONVENING AUTHORITIES OF MEDICAL BOARDS

0601 Mission

To provide supervision and support of associated elements of the Naval Disability Evaluation System.

0602 Functions

a. Convene properly constituted medical boards to report upon the state of health of members of an armed force under the jurisdiction of the Secretary of the Navy.

b. Supervise the performance of medical boards.

c. Review the reports of medical boards for accuracy, completeness and competence.

d. Convene a medical board and refer for disability evaluation any member whose fitness for active duty is in question.

e. As required, convene properly constituted medical boards to ascertain the mental competency of members of the naval service whose competency to handle their own affairs is in question.

f. Provide medical and consultative support services to elements of the disability system upon request.

g. If a full-time Disability Evaluation System Counselor is stationed at the facility, supervise the counseling provided to members and their families. If a full-time Disability Evaluation System Counselor is not stationed at the facility, designate a staff member, preferably the Patient Affairs Officer or one of his assistants on a significant collateral duty basis, to provide counseling to members and their families.

h. Provide office facilities and administrative support to Disability Evaluation System Counsel-

ors where assigned to medical centers.

i. Provide office facilities and administrative support to regional physical evaluation boards where co-located with medical centers.

j. Take timely action to obtain line of duty determinations in injury cases referred to their commands for treatment.

k. Initiate early action to obtain non-medical information regarding the member's ability to perform duty from the reporting senior of the member concerned.

l. Provide medical and consultative support service, office facilities, and administrative support for the performance of periodic physical examinations of personnel carried on the Temporary Disability Retired List.

0603 Procedures

MANMED, Chapter 18, section 3, item 21, provides basic guidance for medical boards. The following subparagraphs provide additional guidance.

a. Cases involving disability evaluation and disciplinary action concurrently. When a medical board report is considered necessary and administrative involuntary separation, court-martial proceedings or investigative proceedings are pending, indicated or have not been completed, the case will not be referred to the Central Physical Evaluation Board directly. This direction also applies to courts-martial cases involving uncompleted sentences to confinement as well as to all cases in which involuntary separation, unsuspended, has been ordered or recommended by appropriate authority. In such instances the medical board report, together with all pertinent facts relative to the disciplinary aspects of the case, shall be sub-

mitted to the Commandant of the Marine Corps or the Chief of Naval Personnel via the Chief, Bureau of Medicine and Surgery for such administrative decisions as are deemed warranted prior to the issuance of orders directing disposition.

b. Cases involving disability evaluation in which mental competency is a factor

(1) Whenever a case involving a mental disorder is referred to a medical board preliminary to disability evaluation, the convening authority shall ensure that the board is constituted as set forth in 37 U.S.C. 602 and described in the Manual of the Medical Department 18-8(5). The board shall render a definite opinion as to whether or not the member is mentally competent to manage his own affairs.

(2) Whenever a case of a member on the Temporary Disability Retired List involved a mental disorder at the time of his previous examination, he shall be referred for a periodic physical examination by order of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, pursuant to paragraph 1102i of this manual. The examining command shall convene a board as required by 37 U.S.C. 602. The board shall render a definite opinion as to whether or not the member is mentally competent (or continues to be incompetent) to manage his own affairs.

(3) The convening authority shall forward one copy of the medical board report and competency certification to the appropriate personnel office as provided in the Manual of the Judge Advocate General (JAGINST 5800.7B), section 1504C(3).

c. Line of duty/misconduct reports

(1) In each case in which a member of the Naval Service incurs an injury which might result in permanent disability or which results in physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation), findings concerning line of duty and misconduct shall be made. Responsibility to order appropriate investigations is contained in the Manual of the Judge Advocate General (JAGINST 5800.7B), section 0806.

(2) Timely and complete reports of findings concerning line of duty and misconduct are essential to physical evaluations involving injuries.

(3) Commanding Officers of medical facilities and other convening authorities of medical

boards shall institute procedures for early notification to cognizant commands of the need for the line of duty/misconduct findings.

(4) Where the command to which a member was attached at the time of his injury is capable of conducting a proper investigation, the commanding officer of the medical facility shall notify the member's command directly of the requirement for an investigation.

(5) Where the command to which a member was attached at the time of his injury is unknown, or incapable of conducting a proper investigation, or if an investigation is unduly delayed, or not being conducted, the Commanding Officer of the medical facility shall promptly report the matter to the commandant of the naval district in which the injury occurred, or to other comparable authority (JAGMAN (JAGINST 5800.7B) section 0207).

(6) Convening authorities of medical boards that refer injured members for physical disability evaluation shall request copies of line of duty/misconduct investigations for transmittal in company with medical board reports to the Central Physical Evaluation Board. This shall be done as soon as practicable and not later than the commencement of dictating of a medical board report.

(7) When convening authorities of medical boards, after reasonable effort in accordance with the preceding subparagraph, are unable to obtain copies of investigations, they shall transmit reports of associated medical boards without the investigations to the CPEB, making comment as to the reason for the absence of the investigative report.

(8) Timeliness of reports of findings concerning line of duty/misconduct can be facilitated by selective use of the NAVJAG Form 5800/15. This brief format of reporting is authorized in any injury case in which, in the opinion of the medical officer, concurred in by the member's commanding officer, the injury was incurred "in line of duty" and "not as a result of the member's own misconduct," or in which a JAG Manual investigation is not required. The use of NAVJAG Form 5800/15 should be actively encouraged where circumstances are appropriate.

d. Reference to performance of duty evaluations in connection with physical disability evaluation. When a member is referred to a PEB and his disability is not the result of a recent, acute, grave illness or injury, evaluation of his performance of

duty by his supervisors (letters, efficiency reports or personal testimony) may provide better evidence of his fitness or unfitness than a clinical estimate as presented in a medical board report. Except in the case of disability resulting from recent, acute, grave illness or injury such "line" input is required for the total evaluation of the member's abilities to perform assigned duties. It is the responsibility of the convening authority of the medical board to officially request such evidence from the member's military superiors for inclusion with the documents he forwards to the Central Physical Evaluation Board.

e. Expedited disability separations

(1) The provisions of this paragraph apply only to members of the Navy and Marine corps who are patients in Service hospitals.

(2) When it appears obvious at the time of admission to the hospital that a member's condition is of such a nature that he is never likely to return to duty, and immediate transfer to a Veterans Administration Hospital is medically indicated, the member may be processed for physical disability retirement prior to attaining optimum hospital improvement in the Service hospital. The medical officer treating the case will, within the first 10 days of the member's hospitalization, inform the hospital commanding officer, who shall immediately forward the information detailed below to the Naval Council of Personnel Boards (Central Physical Evaluation Board) by *speedletter* (telephone in extreme cases), with information copies to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, the Judge Advocate General, and the Chief, Bureau of Medicine and Surgery. Simultaneously, if indicated, a request to the Armed Services Medical Regulating Office (ASMRO) for bed designation in a VA hospital should be submitted, if the member required further hospitalization and the member can be transported. The speedletter shall refer to this paragraph and shall state:

(a) Member's full name, rank/rate, SSN, USN/USNR, USMC/USMCR;

(b) Member's duty station (i.e., activity holding records);

(c) A VA Claim has been prepared and reviewed by a VA representative and is ready for submission upon execution of TDRL orders;

(d) Approximate length of ACTIVE service;

(e) Diagnosis and diagnostic nomencla-

ture number (appending an interim Narrative Summary, to include a description of functional impairment);

(f) If the condition which renders the member unfit is the result of an injury, as opposed to a disease:

1. Duty status of member at time of accident (i.e., leave or liberty, authorized or unauthorized);

2. Opinion of investigating officer regarding line of duty/misconduct;

3. Brief of circumstances of accident.

In addition to the interim Narrative Summary, there shall be appended to the speedletter report a statement signed by the member concerned agreeing to the special processing of his case and waiving his right to a full and fair hearing before a physical evaluation board (sample form in Appendix H).

(3) Subject to the availability of space and facilities and capabilities of the professional staff, hospital commanding officers may approve requests from members processed under this paragraph for retention in a Service hospital until optimum Service hospital improvement has been achieved.

(4) In those instances where the member, after counseling, declines special processing of his case, he shall sign a statement to that effect, to be made a permanent part of the record and the case shall be processed routinely in accordance with applicable provisions of this manual.

f. Periodic physical examinations

(1) The provisions of this paragraph apply only to periodic physical examinations of personnel carried on the Temporary Disability Retired List (10 U.S.C. 1210).

(2) The examination shall be conducted during the month specified in the orders or during the preceding or following month.

(3) The examination shall be comprehensive and conducted with scrupulous care, reporting in full detail all physical impairments, the degree of impairment, and the examiner's findings associated with each impairment. Included will be any impairment from which the member has recovered and new ones acquired while on the TDRL.

(4) One or more physicians may conduct the examination. Advice of consultants should be obtained if the examining physician(s) are in doubt as to an actual physical condition or diagnosis.

Laboratory and radiological studies necessary to document the member's physical condition should be obtained.

(5) Whenever in-patient observation is desirable or necessary for a proper evaluation, admission and retention as an in-patient for a period of as much as ten days are authorized. This length of in-patient observation may be extended upon the authorization of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. It is particularly important that admission as in-patient be considered for proper evaluation of psychiatric cases.

(6) The report of the examination may be prepared in a letter or narrative form. It shall contain an accurate interval history since the last examination with particular reference to the member's employment and time lost therefrom due to the disability for which retired. A report of all clinical evaluations and laboratory studies should be included. It shall contain information regarding the member's current condition and prognosis, including current stability and the likelihood of significant change within the remaining statutory time the member will remain on the TDRL, and a comparative estimate of changes relative to the member's previous condition. In the case of psychiatric disabilities, a statement as to the current degree of impairment of industrial and social adaptability is required.

(7) The report shall contain a statement as to whether personal appearance before a PEB would be detrimental to the member's physical or mental health, and whether disclosure to the member of information relative to his physical or mental condition would adversely affect his physical or mental health.

(8) Unless disclosure of the information contained therein to the member would adversely affect his physical or mental health, the member shall be provided a copy of the report via U.S. mail with instructions that he send any comments or rebuttal directly to the Naval Council of Personnel Boards (CPEB), Ballston Tower #2, Room 905, 801 North Randolph Street, Arlington, Virginia 22203.

(9) In those cases where the member previously has been determined to be incompetent, or if his competency is now in question, the report of periodic physical examination shall be signed by three medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders.

(10) The report shall be prepared and forwarded together with the medical records within 15 days following completion of the examination, via the commanding officer, to the Naval Council of Personnel Boards, CPEB, (Team Four), Room 905, 801 North Randolph Street, Arlington, Virginia 22203.

Part VII

CENTRAL PHYSICAL EVALUATION BOARD

0701 General

The Central Physical Evaluation Board is situated at Headquarters, Naval Council of Personnel Boards in Arlington, Virginia. The Board functions as the initial level of naval physical disability evaluation and oversees the performance of medical boards and physical examination facilities insofar as they contribute to the Disability Evaluation System. The Board oversees the performance of Navy and Marine Corps commands insofar as they contributed to line of duty determinations in disability cases. The Board also determines fitness for duty in cases involving the administrative removal of a member's name from the TDRL.

0702 Mission

To evaluate the physical fitness for active duty and to direct the disposition of personnel who are properly referred to the Board.

0703 Functions

a. Act as the initial level of Department of the Navy physical disability evaluation.

b. Consider the cases of active duty personnel, personnel on the Temporary Disability Retired List, inactive duty reservists, and others who are properly referred for consideration as the result of:

- (1) reports of medical boards;
- (2) periodic physical examinations of personnel on the Temporary Disability Retired List;
- (3) requests for expedited disability separation received from commanding officers of medical facilities;
- (4) requests from the Secretary of the Navy, the Commandant of the Marine Corps, the Chief of Naval Personnel, the Chief of Naval Reserve, the Director, Naval Council of Personnel Boards,

the Board for Correction of Naval Records, and the Chief, Bureau of Medicine and Surgery.

c. Evaluate on the basis of documentary reviews of the case records of members referred to the Board for physical disability evaluation:

(1) physical fitness (or physical qualification in case of an inactive duty member of the Naval or Marine Corps Reserve) of a member for active duty;

(2) if found unfit because of physical disability, the entitlement of the member to benefits authorized by chapter 61 of title 10, United States Code;

d. Issue decisions for the Secretary of the Navy as to the fitness (or physical qualification in the case of an inactive duty member of the Naval or Marine Corps Reserve) for active duty and the disposition of members whose cases fall within the purview of the Board as set forth in this manual.

e. Conform to the statutes and directives of higher authority and with the departmental guidance expressed in this manual.

f. Refer to the Physical Review Council all special interest cases in which the recommended findings include "unfit" and the member has accepted the findings.

g. Refer to regional physical evaluation boards for formal hearings:

(1) all cases of members found unfit for duty in which the member demands a full and fair hearing;

(2) those cases in which a member having been found fit for duty requests a hearing and the request is approved by the Central Physical Evaluation Board or the Director, Naval Council of Personnel Boards.

(3) all cases of members found mentally incompetent; and

(4) such other cases as are deemed appropriate by the Central Physical Evaluation Board.

h. Refer requests for limited duty status from

active duty members under evaluation to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

i. Readdress without action to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, via the Chief, Bureau of Medicine and Surgery, those cases presented for evaluation whose dysfunctions are due solely to conditions not constituting physical disabilities (see Appendix A, paragraph 7). In cases presenting combinations of physical impairments and conditions not constituting physical disabilities, only the former will be considered in physical disability evaluation. If not unfit due to physical disability, the case will be forwarded for departmental action as previously described unless the member demands a full and fair hearing.

j. Monitor performance of the Disability Evaluation System, with specific emphasis on:

- (1) the completeness and competency of reports of medical boards;
- (2) the completeness and competency of reports of periodic physical examinations;
- (3) timeliness and completeness of line-of-duty investigations.

k. Exercise general supervision of a system of records which includes workcards, minimum residual case files consisting of records of proceedings and findings, and copies of notifications of case dispositions issued to the Chief of Naval Personnel and the Commandant of the Marine Corps, as appropriate.

l. In accordance with SECNAV Instruction 5211.5C protect the privacy of individuals whose records are reviewed.

m. Maintain liaison in disability matters not involving the formulation of policy with:

- (1) the Commandant of the Marine Corps;
- (2) the Chief of Naval Personnel;
- (3) the Chief, Bureau of Medicine and Surgery;
- (4) the Veterans Administration;
- (5) naval medical facilities;
- (6) regional physical evaluation boards;
- (7) the Board for Correction of Naval Records.

0704 Organization

a. Composition

(1) The Board shall be composed of five members, a Navy line officer, a Marine Corps of-

ficer, and three Medical Corps officers, all of them career military officers selected on the basis of wide medical and/or military experience, proven performance and education. The Navy line officer, the Marine Corps officer and one Medical Corps officer shall act in each individual case.

(2) The President of the Board presiding in each individual case shall be a Navy line or Marine Corps officer in the grade of O-6 or above.

(3) The remaining membership shall be of O-5 or O-6 grade with preference given to the latter.

(4) The three medical officers shall be senior officers of the Medical Corps with a wide cross-section of clinical experience.

(5) The composition of the boards shall be consistent and shall not be altered by reason of the grade, status or organization of a member under disability evaluation, except by specific direction of the Director, Naval Council of Personnel Boards.

b. Administrator. The senior Navy line or Marine Corps member of the Board shall be designated as Administrator and shall be responsible for the leadership and management of day-to-day Board affairs.

c. Recorder. A recorder shall be permanently assigned to the Board. He shall be a Navy or Marine Corps officer of the grade O-3.

d. Alternate members

(1) In the absence of a principal member, an alternate member may continue the business of the Board. However, the use of alternates shall be limited as much as possible to preserve the equitability and consistency of Board actions.

(2) The Commandant of the Marine Corps, the Chief of Naval Personnel and the Chief, Bureau of Medicine and Surgery shall designate in advance and provide alternate Board members as requested by the Director, Naval Council of Personnel Boards.

e. Reserve membership. At least one member of the Board shall be a Reserve officer in each case in which a Reserve member is under consideration for physical disability evaluation.

0705 Legal Assistance

The Board shall be provided such legal assistance as it requires in its deliberations by the Judge Advocate General's Corps officers assigned to Headquarters, Naval Council of Personnel Boards.

0706 Procedures

a. Operating schedule. The Board shall meet in daily session.

b. Conduct of evaluations

(1) Evaluations shall be based upon documents associated with each case.

(2) Under no circumstances shall Board members engage in discussion with members under evaluation, their counsel or representatives regarding the evaluations of their cases. The creation of any inference of undue influence or partiality in Board evaluations shall be scrupulously avoided.

(3) Each Board member shall act under the oath or affirmation set forth in Appendix E.

c. Line of duty/misconduct reports. In each of its evaluations in which a line of duty/determination is required (Manual of the Judge Advocate General (JAGINST 5800.7B), section 0805), but is not included in case documentation, the Central Physical Evaluation Board shall take timely action to secure a copy together with available endorsements. This will include a speedletter request to the command assigned responsibility for the investigation with a copy to the command in the chain of command exercising general court-martial authority. If no reply to the speedletter is received within 15 days, a message will be sent to the command exercising general court-martial authority requesting assistance in securing the investigation report.

d. Decisions

(1) Decisions of the Board shall be based upon review of:

(a) medical board reports and associated documents, together with endorsements of convening authorities and statements of members referred for disability evaluation;

(b) line of duty/misconduct determinations when applicable and as required by the Manual of the Judge Advocate General (JAGINST 5800.7B), chapter VIII;

(c) statements of service supplied by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate;

(d) reports of periodic physical examination of personnel whose names are carried on the Temporary Disability Retired List;

(e) reports of special consultations, when requested by the Board;

(f) statements of non-medical informa-

tion as to the observation by the reporting senior of performance of duty of the member being evaluated;

(g) when required by the Board, fitness reports and performance evaluations supplied by the Chief of Naval Personnel or the Commandant of the Marine Corps, as they apply to disability evaluation;

(h) requests for expedited disability separation (subparagraph 0603e);

(i) any other pertinent matters.

(2) The Board shall ensure that it has available the necessary information for competent decision, remanding cases or requesting additional information as required.

(3) In arriving at its findings, the Board shall comply with:

(a) applicable statutes and directives of higher authority;

(b) departmental guidance expressed in this manual;

(c) the Veterans Administration Schedule for Rating Disabilities;

(4) Decisions shall be reached through a simple majority of the votes of the Navy line member, Marine Corps member and one medical member in each case.

(5) The Board shall determine in its findings:

(a) That the member is physically fit for active duty, or unfit because of physical disability;

(b) If the member is unfit:

1. The disability (was) (was not) (incurred) (aggravated) while entitled to receive basic pay;

2. The disability (is) (is not) the result of intentional misconduct or willful neglect, and whether such disability (was) (was not) incurred during a period of unauthorized absence;

3. (Select appropriate finding)

a. The disability (is) (is not) the proximate result of active duty or inactive duty training (because of aggravation (when applicable)), or

b. The disability (was) (was not) incurred in line of duty in time of war or national emergency, or

c. The member has over eight years of active service, or

d. The disability (was) (was not) incurred after 14 September 1978;

4. The disability (is) (may be) permanent; and

5. The disability is ratable at (percentage) in accordance with the Veterans Administration Schedule for Rating Disabilities.

(c) when the member is an inactive duty reservist who has not been issued a Notice of Eligibility for Disability Benefits due to an injury (or disease, in those members ordered to active duty for training for more than 30 days other than active duty for training under 10 U.S.C. 270(b)) in accordance with SECNAVINST 1770.3, the only findings to be made are:

1. physically qualified or not physically qualified for active duty in the Naval or Marine Corps Reserve;

2. if not physically qualified (and the case arises under 10 U.S.C. 1004), that the disability (is) (is not) due to intentional misconduct or willful neglect.

(d) When the Commandant of the Marine Corps/Chief of Naval Personnel has recommended that the member's name be administratively removed from the TDRL, the only finding to be made, on the basis of available records, is that the member (is) (is not) physically fit for active duty.

(6) Each finding made pursuant to this chapter, which is concurred in by a majority of the Board, shall constitute the action of the Board. Any dissenting member of the Board shall make a minority report concerning those particulars in which he does not agree with the action of the Board. The report will be attached as part of the record of proceedings. Reference will be made to the attachment in the space provided for minority findings on the NAVSO 6100/16 (Appendix H).

(7) Findings shall be set forth in the Board's records of proceedings and findings and shall be signed by the President of the Board and the Recorder.

(8) Votes of individual members shall be recorded in the Board's records of proceedings and findings.

e. Insufficient medical information. If the board is unable to make the foregoing determinations because of insufficient medical information, the case shall be returned to the commanding officer of the referring hospital for clarification, or the missing information requested by letter. The reason for its return shall be clearly stated in the letter of transmittal.

f. Action on cases of members on the Temporary Disability Retired List

(1) Upon receipt of a report of a periodic physical examination of a member on the TDRL, or a report of other current medical examinations acceptable to the CPEB, the Board shall evaluate such report and take one of the following actions:

(a) If the member's five year period on the TDRL will not soon terminate, and the Central Physical Evaluation Board considers that no change in status is indicated, the member will be so informed by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(b) If the member's five year period on the TDRL will soon terminate, or if the Central Physical Evaluation Board considers that a change in the member's status is indicated, the Central Physical Evaluation Board shall take action in accordance with Appendix D, paragraph 7. The President of the Central Physical Evaluation Board shall notify the member, or his legal representative if the member is mentally incompetent, of such action.

(2) When a member or legal representative is notified under paragraph (1)(b) above, the member shall be further informed that he has fifteen days from the date of mailing of the notification in which to respond. If no response is received by the Central Physical Evaluation Board within fifteen days, the member's acceptance shall be assumed and appropriate action shall be taken.

(3) When the Commandant of the Marine Corps/Chief of Naval Personnel has recommended the administrative removal of a member's name from the TDRL, the Board shall act on the basis of available records but its findings shall be limited to a determination of the member's fitness for duty; notification to the member is not required.

g. Referral of findings to the member

(1) Except in cases involving administrative removal from the TDRL, cases involving members found fit for duty whose requests for full and fair hearings are denied by the Director, Naval Council of Personnel Boards and as noted below, Central Physical Evaluation Board decisions shall not be final unless accepted by the member under evaluation. Findings in each case shall be referred to the member, via the governmental postal system, offering the options of:

(a) accepting the Board decisions and actions;

(b) submitting a rebuttal; and

(c) if found unfit for duty, demanding a full and fair hearing before a regional physical evaluation board; or

(d) if found fit for duty, requesting a full and fair hearing before a regional physical evaluation board.

(2) If no response is received by the Central Physical Evaluation Board within fifteen days of the date of mailing of the notification of the Board's evaluation to the member or of his notification of the findings by the Disability Evaluation System Counselor by telephonic communication, his acceptance shall be assumed and the case shall be finalized. (See 0403g.)

h. Rebuttal of Central Physical Evaluation Board findings. The member and the Disability Evaluation System Counselor/Patient Affairs Officer shall be advised of the Board's findings. The member shall be afforded fifteen days commencing with the date of mailing to him of a copy of the Board findings or of his notification of the findings by the Disability Evaluation System Counselor subsequent to telephonic communication, in which to file a rebuttal. A rebuttal shall set forth, specifically, the findings of the Board with which the member does not concur, together with proposed alternate findings which are acceptable to the member. It is desirable that the rebuttal include a rationale for the member's position. In those cases where a member who has been found fit for duty desires a full and fair hearing the request for a hearing must accompany the rebuttal.

i. Action where the member does not accept the Board's decisions. Where the member does not accept the Board's decisions and actions, the Central Physical Evaluation Board shall:

(1) reconsider the case on the basis of the member's rebuttal, and/or

(2) refer the case to a full and fair hearing before a regional physical evaluation board if the member has been found unfit and so demands; or

(3) consider the request for a full and fair hearing from a member found fit for duty. If the request is denied refer the case to the Director, Naval Council of Personnel Boards.

j. Acceptance of the findings and subsequent legal review. In those cases where the member being evaluated accepts the findings of the Board, fails to respond within the time prescribed, or after having been found fit for duty and his request for a full and fair hearing has been denied by Director, Naval Council of Personnel Boards, the

findings shall be referred to the Judge Advocate General for legal review under the provisions of 10 U.S.C. 5148. The findings in those cases involving the administrative removal of a member's name from the TDRL shall be referred directly to the Judge Advocate General for legal review.

k. Notifications of decisions to service personnel manager. Upon determination by the Judge Advocate General of the absence of legal objection to Board findings, the findings shall be issued by the Board as final decisions in each case. The President of the Board, acting for the Secretary of the Navy, shall approve the findings and direct final disposition consistent with the findings.

(1) Notifications of decisions to the Chief of Naval Personnel and the Commandant of the Marine Corps, as appropriate, shall normally be made via interoffice mail.

(2) Notifications shall bear the personal signatures of the President and the Recorder.

l. Decisions in special interest cases

(1) In those cases involving flag, general or Medical Corps officers where the officer is found fit for duty and accepts that finding, or his request for a formal hearing is denied, by the Director, Naval Council of Personnel Boards the Board shall take final action. When the recommended findings include "unfit" and would result in the retirement of the member, the Board shall refer the case to the Physical Review Council upon acceptance of the findings by the member or his failure to respond within the time prescribed.

(2) In all cases designated by the Secretary of the Navy, or the Director, Naval Council of Personnel Boards, the Board shall make recommended findings and, if a formal hearing is not demanded, refer those cases to the Physical Review Council.

m. Cases involving concurrent consideration of disability and discipline

(1) In those cases involving the potential for either disciplinary or disability disposition, where the finding is "fit", and that finding is accepted, or the member's request for a formal hearing is denied by the Director, Naval Council of Personnel Boards the Board shall take final action. When the recommended findings include "unfit" and are accepted, the Board shall defer its decision as to disposition of the member and shall refer the case to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for the resolution of the disciplinary action.

(2) The ultimate disposition of the member with regard to physical disability shall depend on whether disciplinary action is taken and the nature of the disciplinary action. If the service's action does not include punitive or administrative discharge, the case will be referred back to the Central Physical Evaluation Board for disposition in accordance with this manual following the completion of the disciplinary action. If the service's action includes either a punitive or administrative discharge, the Central Physical Evaluation Board shall be notified of the nature of the separation and the disability documentation shall be returned to the Board. The Board shall then annotate the case as "No action. Discharged under other provisions of law".

n. Decisions in cases involving requests for limited duty. Board decisions as to final disposition of a member undergoing physical disability evaluation shall be withheld in cases involving requests for limited duty so as to permit referral to the Chief of Naval Personnel or the Commandant of the Marine Corps. The personnel manager concerned shall decide whether it is in the best interest of the respective Service to retain the member on active duty in a limited duty status. Such decisions shall normally be made within twenty (20) days. Where the decision for limited duty is affirmative, final disability evaluation and disposition shall be withheld until termination of the stipulated period of limited duty at which time the Board will undertake final evaluation and direct final disposition of the member in accordance with provisions of this manual. Where the decision for limited duty is negative, final disability evaluation and dispositions shall proceed in accordance with the provisions of this manual.

o. Format of the record of proceedings

(1) The proceedings and findings of the Central Physical Evaluation Board in each case shall be recorded in summary form using NAVSO Form 6100/16 (Appendix H). Detailed case analyses shall not normally be prepared in conjunction with evaluations by the Central Physical Evaluation Board.

(2) A complete record of proceedings, including the summary of proceedings and findings and all documents which were considered by the Board in its deliberations shall be assembled as indicated in Appendix F, Attachment 2.

p. Transmittal of the record of proceedings

(1) All records of proceedings that involve final departmental action in physical disability evaluation shall be initially transmitted to the Judge Advocate General for legal review under the provisions of 10 U.S.C. 5148.

(2) Following a determination by the Judge Advocate General that legal objection to the final departmental action does not exist, the complete record shall be returned to the Central Physical Evaluation Board for final departmental action in each case.

(3) Ultimate disposition of the record of proceedings following final departmental action shall be in accordance with the provisions of Appendix J of this manual.

(4) In cases in which the member demands a formal hearing, or his request for a formal hearing is approved, as appropriate, the complete record of proceedings of the Central Physical Evaluation Board shall be transmitted to the designated regional board.

q. Revisions in notifications of Board decisions. The President of the Central Physical Evaluation Board may modify or cancel notifications to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, of board decisions and direct appropriate substitute disposition in those cases in which there is determined to have occurred a clerical or mathematical error in the record of proceedings, or the member has been discharged under other provisions of law. Provided retirement or separation has not been effected by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, the President may also modify or cancel notifications of decisions in those cases where the member has been rehospitalized or has demanded a formal hearing after having previously accepted the findings of the Central Physical Evaluation Board.

r. Records

(1) A workcard (NAVSO 6100/15 or NAVSO 6100/3, as appropriate) shall be prepared in each case. (Appendix H). Workcards shall be annotated and initialed by each Board member voting and shall be retained as part of the Naval Council of Personnel Boards Headquarters residual case file.

(2) Upon completion of disability evaluation in each case, the Central Physical Evaluation Board will establish a permanent record of proceedings consisting of:

(a) the medical board report and associated records and correspondence;

(b) Central Physical Evaluation Board findings together with associated correspondence, if applicable.

s. Referrals from the Board for Correction of Naval Records

(1) The Board for Correction of Naval Records will from time to time request comments and recommendations on specific cases under its cognizance.

(2) Board for Correction of Naval Records requests shall be accommodated using procedures that adhere as closely as possible to the decisional

procedures of this manual.

t. Expedited disability separation procedures. The Central Physical Evaluation Board shall take final action on expedited disability separation cases processed under paragraph 0603e of this manual. In arriving at its decision, the Board shall insure that the following criteria are met:

(1) The member is unfit for duty and not likely to return to a duty status;

(2) The member's disability was incurred in line of duty and is not the result of his own misconduct.

(3) The member's disability was not incurred during a period of unauthorized absence.

Part VIII

REGIONAL PHYSICAL EVALUATION BOARD

0801 General

Three regional physical evaluation boards are situated at:

National Naval Medical Center
Bethesda, Maryland 20014

Naval Training Center
Great Lakes, Illinois 60088

Naval Regional Medical Center
San Diego, California 92134

These Boards function as the intermediate level of naval physical disability evaluation.

0802 Mission

To make recommended findings regarding the physical fitness of personnel who are properly referred to the boards for evaluation.

0803 Functions

a. Act as the intermediate level of Department of the Navy physical disability evaluation.

b. Consider the cases of active duty personnel, personnel on the Temporary Disability Retired List, inactive duty Reservists and others who are properly referred for consideration as the result of:

(1) demands or requests, as appropriate, for full and fair hearings by members undergoing physical disability evaluation;

(2) requests from the Secretary of the Navy, the Director, Naval Council of Personnel Boards, the Board for Correction of Naval Records or the President, Central Physical Evaluation Board.

c. Evaluate on the basis of formal hearings attended by a member, and/or counsel:

(1) physical fitness (or physical qualification in case of an inactive duty member of the Naval or Marine Corps Reserve) of a member for active duty;

(2) if found unfit because of physical disability, the entitlement of the member to benefits authorized by chapter 61 of title 10, United States Code;

d. Provide full and fair hearings required by 10 U.S.C. 1214 pertaining to disability evaluation of members of the Naval Service.

e. Conform to the statutes and directives of higher authority and with the departmental guidance expressed in this manual.

f. Grant waivers of the member's personal appearance where requested by the member undergoing disability evaluation.

g. Refer board recommendations together with a verbatim record of hearings in each case to the Physical Review Council.

h. In accordance with SECNAV Instruction 5211.5C protect the privacy of individuals whose records are reviewed.

0804 Organization

a. Composition

(1) Each board shall be composed of three members, a Navy line officer, a Marine Corps officer, and a Medical Corps officer, all of them career military officers selected on the basis of wide medical and/or military experience, proven performance and education.

(2) The President of each board shall be a Navy line or a Marine Corps officer in the grade of O-6.

(3) The remaining membership, a medical officer and a Navy line or Marine Corps officer, shall be of O-5 or O-6 grade with preference given to the latter.

(4) The composition of the boards shall be consistent and shall not be altered by reason of the grade, status or organization of a member undergoing disability evaluation, except as specifically directed by the Director, Naval Council of Personnel Boards.

(5) In addition to the board members, each board shall be assigned the continuous services of no less than two officers of the Judge Advocate General's Corps who shall act as counsel for the boards and counsel for members appearing before the boards. These counsel shall be appointed from the staffs of appropriate Naval Legal Services Offices, or from such other sources as may be designated by the Judge Advocate General. They shall be qualified in accordance with 10 U.S.C. 827b (Article 27(b) UCMJ). They shall have had substantial prior experience as a military attorney.

b. Administrator. The senior Navy line or Marine Corps member shall be designated as the Administrator in each Board and shall be responsible for the leadership and management of board affairs.

c. Alternate members

(1) In the absence of a principal member of a board, an alternate member may continue the business of the Board. However, the use of alternates shall be limited as much as possible to preserve the equitability and consistency of Board actions.

(2) Changes in alternate nominations shall be held to a minimum so as to retain as high a degree of expertise as practicable in the boards. Alternates shall be carefully instructed in the provisions of this manual.

(3) The Commandants of Naval Districts (or, in areas in which the functions of the Commandant have been assigned to succeeding authority, the succeeding authority) and Directors of Marine Corps Districts in which regional physical evaluation board are located shall designate in advance and provide alternate board members as requested by the Director, Naval Council of Personnel Boards.

d. Alternate counsel

(1) The principles attendant to the use of alternate members in subsection 0804c above shall apply to alternates for assigned military counsel.

(2) A member undergoing disability evaluation shall be afforded the right to counsel of his choice, regardless of legal qualifications. Military counsel other than those regularly assigned to the

Boards, shall be provided, upon request, only if reasonably available in the local areas of the Boards, and at no additional expense to the Government.

(3) A civilian employed by the government who is a member of the bar of a Federal court or the highest court of a state may be appointed counsel for a board.

e. Reserve membership. At least one member of the Board shall be a Reserve officer in each case in which a Reserve member is under consideration for physical disability evaluation.

0805 Procedures

a. Operating schedule. The Boards shall meet in daily session.

b. Scheduling hearings

(1) The Administrators of the boards shall establish the date and time of each hearing, subject to the following guidance:

(a) As an objective, hearings for active duty personnel shall be held within 10 days of receipt of the record of proceedings of the case being referred to the Board.

(b) As an objective, hearings for personnel on the Temporary Disability Retired List shall be held within 30 days of receipt of the record of proceedings in the case being referred to the Board.

(c) Hearings shall not be scheduled unless all necessary records will be available and ready for review by the board and the member, his counsel or his guardian, spouse or next of kin for a reasonable period prior to the commencement of the hearing.

(d) The Administrators may authorize an extension of the above times upon presentation by the member or his counsel of substantial grounds for such extension. In such instances delay shall be the minimum reasonable on the basis of the grounds presented.

(e) The Administrator may also extend the above times when in his judgment extension is warranted by unusual circumstances.

(f) Except as specifically authorized by the Director, Naval Council of Personnel Boards, each requested hearing shall be concluded within sixty (60) days following the receipt of the case by the regional board.

(g) Failure on the part of a member, his counsel, or of his guardian, spouse or next of kin

to appear at a scheduled hearing without an acceptable excuse shall constitute a waiver of his right to appear in person. The hearing shall proceed and the President will include in the record a statement of the circumstances. Late appearances, while an in absentia hearing is in progress, shall be heard.

c. Conduct of evaluation hearings

(1) Regional physical evaluation board hearings shall be conducted in open session unless, in the opinion of the President, an open session would be prejudicial to the objective of attaining a full and fair hearing, or a closed hearing is requested by the member.

(2) Board presidents shall rule on all interlocutory questions except challenges. These rulings may be objected to by other board members, in which case, the matter shall be decided by a majority vote of the members in closed session.

(3) Board presidents may recess or adjourn a hearing, or grant a continuance, of a case where substantial reason is made apparent.

(4) Board presidents shall preside over all sessions of the boards and shall speak for the board in announcing recommended findings and the result of any interlocutory vote.

(5) Board sessions shall be conducted with dignity and decorum and with the objective of eliciting all the facts bearing on a case. Witnesses shall be encouraged to contribute to this objective. Board members shall be patient and persistent in eliciting all pertinent facts.

(6) Active duty personnel shall appear in uniform at hearings unless specifically excused by the Administrators from doing so.

(7) Each board member shall act under the oath or affirmation set forth in Attachment (1) to Appendix E.

(8) The procedural guide set forth in Appendix E shall be followed in all regional physical evaluation board hearings.

(9) A verbatim record shall be kept of all hearings before regional physical evaluation boards.

(10) Objections may be made to any action (other than a challenge) taken or proposed to be taken by the board, as well as to the admission of testimony. Objections, when made, are recorded as part of the proceedings. The board must note in the record its ruling on any objections that may be offered. Objections are ruled upon by the President of the Board. However, if any other

member of the Board dissents from the president's ruling, the objection is ruled upon by the board in closed session. The ruling is the decision of the majority of the board and is announced on the reopening of the hearing.

(11) Challenges

(a) Any board member of a regional physical evaluation board may be challenged by an individual undergoing physical disability evaluation at any time during the hearing for cause stated to the PEB. The board shall not receive a challenge to more than one member at a time. After disclosing grounds for a challenge, the challenging individual may examine the board member. This examination may or may not be under oath at the discretion of the challenger but, in either event, shall be recorded verbatim. The counsel for the board may question the challenger. After all questions have been put and answered, any other evidence bearing on the board member's fitness to serve shall be heard. If the challenged board member is to be examined under oath as to his fitness to serve, the counsel for the board shall administer the oath or affirmation as set forth in Attachment (1) to Appendix E.

(b) The burden of sustaining the challenge is on the individual who made the challenge. The challenged board member shall withdraw when the board is closed to vote upon the challenge. One vote of the remaining members is enough to sustain the challenge. The board shall decide the challenge according to the preponderance of the evidence. When a sustained challenge reduces the board below the required number of members, alternate board members will be called by the President (or senior member) of the board.

(12) Administering oaths. The prescribed oaths or affirmation for the board members, the reporter, the counsel for the board and the member, members and witnesses as set forth in Attachment (1) to Appendix E, shall be administered. (see JAG Manual (JAGINST 5800.7B), sec. 0111).

d. Admission of evidence and testimony

(1) Members undergoing disability evaluation in formal hearings before regional physical evaluation boards shall be permitted to introduce witnesses, depositions, documents, sworn or unsworn statements or other evidence in their behalf and to question all witnesses who testify at the hearing.

(2) Members may also make oral or written

statements.

(3) Members may elect not to offer evidence or testimony.

(4) Members may not be required to make statements touching upon circumstances surrounding the origin or aggravation of any disease or injury (10 U.S.C. 1219) (Appendix B).

(5) Members and witnesses introduced by them may be questioned by members of the boards regarding evidence or testimony submitted by them.

(6) Testimony of witnesses shall be taken under oath or affirmation unless otherwise requested by the member, his counsel, or his guardian, spouse, or next of kin.

(7) Before taking testimony, the counsel for the board shall, for the record, present all papers pertaining to the case to the board in open session. These papers may be inspected by the member and his counsel during the hearing. The member or his counsel may question the author of the document, record, or statement by calling him as a witness, if he is located at the installation at which the board is located or otherwise reasonably available, or by taking his deposition.

(8) A regional physical evaluation board shall consider all documentary evidence transmitted to it by proper authority. The board, in addition, may require and examine such records as may be in the files of the Department of the Navy that relate to the issues before the board. All evidence having a probative value as to the determination of issues before the board shall be considered. In consideration of the weight and probative value to be accorded evidence, the members of the board are expected to utilize their background and experience, their common sense, and their knowledge of human nature and behavior. In every case, the testimony of the member concerned shall be considered in connection with all the evidence adduced and given such weight as the board may believe it merits. When the testimony presented at the hearing indicates that the member claims to have disabilities not disclosed by the official medical records or presents evidence sharply in conflict with official medical records, and the issue thus drawn is not one that can be readily resolved by the observation of the board, there shall be further development of the case by requesting further physical examination, special studies, or further investigation by appropriate agencies; and the hearing shall be adjourned until

such development has been accomplished. Recommended findings of the boards shall be based upon evidence consistent with a reasonable probability of truth.

(9) Witnesses. The board may summon military witnesses whose presence is requested by the member or his counsel, if the witnesses are reasonably available and if, in the opinion of the board, their testimony is essential or contributes materially to the case. Article 49, UCMJ (10 U.S.C. 849), is used in determining reasonable availability of witnesses. The use of affidavits or depositions to obtain testimony of witnesses is encouraged. The board may summon military witnesses considered necessary to complete its recommendations and to comply with the legal requirements of a full and fair hearing. To assure the attendance of a military witness, the Administrator of the Board will request the proper commander to make the necessary arrangements for the timely presence of the witness, provided he is reasonably available. If the commander considers that the witness is not reasonably available, he shall provide a statement giving the reasons therefor, and this statement shall be appended to the record.

e. Findings

(1) Each board shall make recommended findings with regard to the physical fitness for active duty (or qualification for active duty in the case of an inactive duty member of the Naval or Marine Corps Reserve) on the basis of a formal personal hearing conducted in the presence of the member being evaluated and/or his counsel.

(2) In connection with each formal hearing the boards shall consider:

- (a) physical evidence presented;
- (b) statements of the member, his counsel, and/or witnesses presented by the member;
- (c) medical board reports and associated documents, together with endorsements of convening authorities and statements of members referred for disability evaluation;
- (d) line of duty/misconduct determinations when applicable and as required by the Manual of the Judge Advocate General (JAGINST 5800.7), chapter VIII;
- (e) statements of service supplied by the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate;
- (f) reports of periodic physical examination of personnel carried on the Temporary Disability Retired List;

(g) reports of special consultations, when requested by the Board;

(h) statements of non-medical information as to the observation by the reporting senior of performance of duty of the member being evaluated;

(i) when required by the Board, fitness reports and performance evaluations supplied by the Chief of Naval Personnel or the Commandant of the Marine Corps, as they apply to disability evaluation;

(j) any other pertinent matters.

(3) Each board shall ensure that it has available the necessary information for competent decision, remanding cases or requesting additional information as required.

(4) In arriving at recommendations each board shall comply with:

(a) applicable statutes and directives of higher authority;

(b) departmental guidance expressed in this manual;

(c) the Veterans Administration Schedule for Rating Disabilities.

(5) Findings to be recommended by the boards shall be reached through a simple majority of the three members voting.

(6) Upon completion of the presentation of the case, the board shall be closed for deliberation. No person, other than the voting members, shall be present during closed sessions. The voting members then arrive at the recommended findings as prescribed in this Part. Upon completion of the deliberations, the board shall reopen and the findings shall be announced to the member or counsel. The recommended findings shall be made as prescribed in Appendix D. The Board shall determine in its findings:

(a) That the member is physically fit for active duty, or unfit because of physical disability.

(b) If the member is unfit:

1. The disability (was)(was not) (incurred) (aggravated) while the member was entitled to receive basic pay;

2. The disability (is) (is not) the result of intentional misconduct or willful neglect, and whether such disability (was) (was not) incurred during a period of unauthorized absence;

3. (Select appropriate finding)

a. The disability (is) (is not) the proximate result of active duty or inactive duty training (because of aggravation (when applicable)),

or

b. The disability (was) (was not) incurred in line of duty in time of war or national emergency, or

c. The member has over eight years of active service, or

d. The disability (was) (was not) incurred after 14 September 1978;

4. The disability (is) (may be) permanent; and

5. The disability is ratable at (percentage) in accordance with the Veterans Administration Schedule for Rating Disabilities.

(c) When the member is an inactive duty reservist who has not been issued a Notice of Eligibility for Disability Benefits due to an injury (or disease, in those members ordered to active duty for training for more than 30 days other than active duty for training under 10 U.S.C. 270(b)) in accordance with SECNAVINST 1770.3 the only findings to be made are:

1. physically qualified or not physically qualified for active duty in the Naval or Marine Corps Reserve;

2. if not physically qualified (and the case arises under 10 U.S.C. 1004), that the disability (is) (is not) due to intentional misconduct or willful neglect.

(7) Each recommended finding made pursuant to Part VIII of this manual, which is concurred in by a majority of the Board, shall constitute the action of the Board. Any dissenting member of the Board shall make a minority report concerning those particulars in which he does not agree with the action of the Board. The report shall be attached as part of the record of proceedings. Reference shall be made to the attachment in the space provided for minority findings on NAVSO 6100/16 (Appendix H).

(8) Votes of individual members shall be recorded in the board's records of proceedings and findings.

(9) The "Notification to Member of Recommended Findings", NAVSO 6100/17 (Appendix H), shall normally be completed, including the action of the member, before the member departs the Board.

(10) It is essential that the record clearly reflect facts sufficient to form the basis for the recommended findings. Accordingly, the board shall state in the record its basis for conclusions.

f. Insufficient information

(1) If, for any reason, a board is unable to make the foregoing determinations because of insufficient information, the president of the board shall take appropriate action to obtain the necessary information before proceeding further.

(2) The elapsed time to recognize inadequate information and to request and acquire more information is chargeable to the regional physical evaluation board's processing time objective. Requests shall be actively followed and the Director, Naval Council of Personnel Boards informed when the time objectives are exceeded.

g. Rebuttal of recommended findings

(1) The member and his counsel shall be advised of the board's recommended findings. If the member indicates a desire to rebut, the member shall be informed that if the rebuttal is not received by the board within fifteen days after mailing of the member's copy of the transcript of his hearing, the record of proceedings shall be forwarded to the Physical Review Council with notification concerning nonreceipt. Timely rebuttals received by a regional PEB shall be considered by the board in plenary session.

(2) A rebuttal shall set forth, specifically, the recommended findings of the board with which the member or his counsel does not concur, together with proposed alternate recommended findings which are acceptable to the member. It is not mandatory, but desirable, that a brief, setting forth the legal and factual basis for such nonconcurrency or any other request for relief, be included in the rebuttal.

h. Format of the record of proceedings

(1) The proceedings of the regional physical evaluation boards shall be recorded verbatim.

(2) The findings of the regional physical evaluation boards shall be recorded in summary form using NAVSO Form 6100/16 (Appendix H).

(3) A complete record of proceedings, including a verbatim transcript of the hearing (unless otherwise authorized), the summary of findings and all documents considered by the boards in their deliberations shall be assembled as indicated in Appendix F, Attachment 2.

i. Transmittal of the record of proceedings. The record of proceedings of regional physical evaluation boards shall be transmitted to the Naval Council of Personnel Boards (Physical Review Council). See Appendix F.

j. Counsel for the Board. The Counsel for the Board shall:

(1) secure and present all available evidence relevant to the cases brought before it;

(2) ensure that the board has before it information to ascertain as accurately as possible:

(a) the circumstances in which the physical impairment was incurred;

(b) the extent of the disability.

(3) when required by the President of the Board question witnesses so as to impartially elicit all available evidence;

(4) be responsible for review of the record of proceedings;

(5) sign the record of proceedings before the record is presented to the board president for his signature;

(6) ensure that any notice or other written communication required or permitted to be given to a member undergoing evaluation shall be given to the counsel for the member (5 U.S.C. 500) (Appendix B).

k. Designated military counsel for the member. In order to provide maximum pre-hearing preparation time, to minimize unnecessary travel and avoidable hearing delays, a military counsel for the member will be detailed immediately subsequent to the receipt of a case from the Central Physical Evaluation Board.

(1) The military counsel for the member shall represent members being evaluated unless the member refuses counsel or elects for other counsel of his choice.

(2) When a member elects for counsel of his choice, the military counsel for the member shall act as associate counsel if requested to do so by the member.

(3) The military counsel for the member shall act in that capacity in all cases in which the member being evaluated is mentally incompetent, except when a duly appointed guardian, spouse or next of kin obtains or requests other counsel (in which case the military counsel may act as associate counsel if requested).

(4) The military counsel for the member shall:

(a) confer with and fully advise the member of the legal and other substantive considerations in his case;

(b) represent the member before the regional physical evaluation board, presenting to the board information and arguments in support of the member's case and interests;

(c) arrange for the presence at the hear-

ing of desired witnesses and evidence in support of the member's case;

(d) interview witnesses prior to the hearing and question them during the hearing;

(e) counsel the member regarding the recommended findings of the regional physical evaluation board and the courses of action open to the member. The military counsel shall recommend courses of action that are most favorable to the member and consistent with the letter and intent of statutes, regulations and directives addressing physical disability evaluation and administration;

(f) prepare or assist in the preparation of rebuttals against board findings at the request of the member.

(g) if the Physical Review Council makes adverse substitute findings, counsel the member regarding those findings and recommend the course of action most favorable to the member consistent with the letter and intent of statutes, regulations and directives addressing physical disability evaluation and administration. He may prepare or assist in the preparation of rebuttals against adverse substitute findings at the request of the member.

Part X

DIRECTOR, NAVAL COUNCIL OF PERSONNEL BOARDS

1001 Mission

To oversee and administer physical disability evaluation procedures within the Department of the Navy.

1002 Functions

a. Under the Secretary of the Navy exercise primary cognizance within the Department of the Navy for matters relating to the Disability Evaluation System.

b. make recommendations to the Secretary of the Navy regarding the number, location, organization, tasking and resources of Disability Evaluation System elements.

c. Supervise and direct the activities of

- (1) the Central Physical Evaluation Board;
- (2) the Physical Review Council;
- (3) the Regional Physical Evaluation Boards

permanently located at Bethesda, Great Lakes and San Diego;

(4) the Disability Evaluation System Counselors located at major naval regional medical centers.

d. Submit recommendations to the Secretary of the Navy regarding policy and procedures for disability evaluation.

e. Monitor personnel assignments to elements of the Disability Evaluation System under the cognizance of the Director, Naval Council of Personnel Boards.

f. Provide administrative and clerical support for the Physical Review Council and all physical evaluation boards.

g. Maintain appropriate liaison with

(1) disability evaluation activities in other services;

(2) offices administering disability affairs within the Office of the Secretary of Defense;

(3) offices administering disability affairs within the Veterans Administration.

h. Maintain coordination with the Commandant of the Marine Corps, the Chief of Naval Personnel, the Chief, Bureau of Medicine and Surgery, and the Judge Advocate General in matters associated with disability administration.

i. Inform the Secretary of the Navy of matters of interest to him, referring to the Secretary for decision matters which are properly within his purview.

j. Maintain a system of records, including as a minimum

(1) Records specified for each board or council as stipulated in the procedures prescribed for that board or council.

(2) Records required for the administration of military and civilian personnel.

(3) Files of correspondence received and issued.

k. Protect the privacy of individuals who are evaluated in accordance with SECNAV Instruction 5211.5C.

l. Prepare and submit to the Secretary of the Navy a semi-annual report covering the operations of the Disability Evaluation System.

m. Establish billet/position assignment criteria for all elements of the Disability Evaluation System under the cognizance of the Director, Naval Council of Personnel Boards.

n. As authorized by the Secretary of the Navy, publish and maintain the Department of the Navy Disability Evaluation Manual.

o. Convene

- (1) the Central Physical Evaluation Board;
- (2) the Physical Review Council;
- (3) regional physical evaluation boards.

p. Take appropriate action on appeals properly referred to the Director in conformance with paragraph 0214 of this manual. Such action shall

normally include further referral by the Director to naval offices and activities having cognizance over the subject matter of the appeal and may include referral to a *de novo* evaluation board or to an ad hoc review board. The Director may take independent appellate action to correct obvious clerical and mathematical errors in the record of proceedings that are not adverse to the member.

q. Refer proposed actions in appellate review to the Judge Advocate General for legal review under 10 U.S.C. 5148 prior to the issuance of decisions.

r. In the absence of legal objection to appellate decisions, issue such decisions for the Secretary of the Navy.

s. Take appropriate action on Naval Physical Disability Review Board opinions on cases referred to that Board by the Physical Review Council. When the Director does not approve the recommended findings of the Naval Physical Disability Review Board, he shall clearly state the reason for his action in the record.

t. Review and forward to the Secretary of the Navy, with appropriate recommendations, those special interest cases referred to him by the Physical Review Council.

u. Take appropriate action on requests for full and fair hearings referred to the Director in conformance with paragraph 0706i(3) of this manual. The Director may grant the request and order the case referred to a formal hearing or he may deny the request and order the termination of the evaluation proceedings on the basis of the current medical board and Central Physical Evaluation Board findings. The decision of the Director in any case will not be subject to appeal. In evaluating a member's request for a full and fair hearing the Director, Naval Council of Personnel Boards will evaluate the case and will grant the request for a hearing if his review discloses by a preponderance of evidence that the finding of fit for duty may be erroneous or there are extraor-

dinary circumstances which indicate that a full and fair hearing is necessary for a proper determination.

1003 Organization

a. Organizational divisions. That portion of the Disability Evaluation System under the cognizance of the Director, Naval Council of Personnel Boards has four organizational divisions:

- (1) the management Office of the Director;
- (2) the evaluating elements:

- (a) the Physical Review Council,
- (b) the Central Physical Evaluation

Board, and

(c) the regional physical evaluation boards, together with their assigned administrative support;

(3) the counseling offices (Disability Evaluation System Counselors); and

(4) administrative support assigned to the headquarters.

b. Director and Deputy, rank and service requirements. The Director shall be a flag officer of the Navy, or a general officer of the Marine Corps. He shall a deputy of the rank of Colonel Marine Corps or Captain Navy respectively.

c. Management staff. In addition to the Director and the Deputy, the management Office of the Director shall include a small staff having responsibility for planning, programming and budget functions; formulation of policy; and the direction and supervision of the Disability Evaluation System.

d. Legal Advisor to the Director. The management office of the Director shall also include officers of the Judge Advocate General's Corps who shall serve as legal advisors to the Director. These officers shall further act as counsel to the Central Physical Evaluation Board and the Physical Review Council.

Part XI

COMMANDANT OF THE MARINE CORPS AND CHIEF OF NAVAL PERSONNEL

1101 Mission

To undertake certain personnel management actions in support of naval disability evaluation policy.

1102 Functions

- a. Upon request by the convening authority of a medical board, provide to the Central Physical Evaluation Board statements of naval service performed by members undergoing physical disability evaluation.
- b. Upon request by the Central Physical Evaluation Board and the Physical Review Council, provide access to fitness reports and performance evaluations for review as they relate to disability evaluation of members being considered.
- c. Take action on requests submitted by members found physically unfit for continuance on active duty in a limited duty status.
- d. Administer those personnel retained on active duty in limited duty assignments in accordance with paragraph 0215 of this manual.
- e. Direct the disposition of active duty members whose physical disability evaluation has been completed. Such dispositions include:
 - (1) continuation on active duty;
 - (2) discharge from the Naval Service with or without severance pay;
 - (3) retirement from the Naval Service with disability retirement pay;
 - (4) other disposition warranted by special circumstances.
- f. Recommend to the Secretary of the Navy the disposition of members in whose cases both disability and disciplinary actions are pending; advise the Director, Naval Council of Personnel Boards when members undergoing evaluation are administratively declared deserters.
- g. In conjunction with the Chief, Bureau of Medicine and Surgery, refer to the Central Physical Evaluation Board the medical board reports of those members whose continued fitness for active duty is questioned on Departmental review.
- h. Upon request by members provide counseling regarding details of their dispositions following physical disability evaluation.
- i. Administer the Temporary Disability Retired List to include
 - (1) maintaining an accurate account of authorized members and their locations;
 - (2) directing members to undergo periodic physical examinations at not greater than 18-month intervals, and designating medical facilities at which the examinations are to be performed;
 - (3) monitoring of instances of failure to report for scheduled physical examinations as arranged by examining facilities, together with notification of the member that a second failure to report will result in stoppage of retired pay;
 - (4) termination of disability retired pay for members on the Temporary Disability Retired List who twice fail to report for a scheduled periodic physical examination, in non-compliance with orders issued to them;
 - (5) administrative removal from the Temporary Disability Retired List on the fifth anniversary of placement on that List without entitlement to any benefits provided by 10 U.S.C. chapter 61, any member who fails to report for final physical examination, or otherwise fails to arrange for an acceptable current medical examination, unless evidence shows just cause for failure to be examined (DoD Directive 1332.18 of 9 September 1968 (enclosure (1) to SECNAVINST 1850.3B)). Refer, with recommendations as to disposition (discharge/retire under other provisions of law) to the Director, Naval Council of Personnel Boards, for action by the Central Physical Evaluation Board on the

basis of available records, each case for a determination of the member's fitness for active duty.

(6) direction to members to undergo follow-up physical examinations if requested by the Naval Council of Personnel Boards;

(7) direction of the disposition of members who have been removed from the Temporary Disability Retired List. Such dispositions include

(a) return to active duty of members who so request and are otherwise eligible;

(b) permanent retirement;

(c) discharge from the Naval Service with or without severance pay.

(8) informing a member on the Temporary Disability Retired List when the Central Physical Evaluation Board considers that no change in status is indicated following a periodic physical or report of other current medical examination acceptable to the Naval Council of Personnel Boards;

(9) authorization of reimbursement for directed travel performed by members in connection

with physical examination and appearances before regional physical evaluation boards;

(10) notification of the Naval Council of Personnel Boards when members on the Temporary Disability Retired List are unable to undergo periodic physical examinations at least once every 18 months by reason of circumstances beyond their control.

j. Provide officers and enlisted personnel of requisite experience and judgement to serve in evaluation and counseling roles within the Disability Evaluation System.

1103 Withdrawal of Proceedings

The Commandant of the Marine Corps and the Chief of Naval Personnel may, for good and sufficient reason and with the consent of the member concerned, withdraw any case from the Disability Evaluation System.

Part IX

PHYSICAL REVIEW COUNCIL

0901 General

The Physical Review Council is situated at the Headquarters, Naval Council of Personnel Boards in Arlington, Virginia. It reviews the recommended findings of regional physical evaluation boards and the proceedings and findings of the Central Physical Evaluation Board when referred to the Council under the provisions of paragraph 0703f of this manual. Decisions of the Council are final, subject to legal review, in all cases other than those which:

- a. are accepted for appellate review under the provisions of paragraph 0214; or
- b. are automatically referred to the Physical Disability Review Board under the provisions of paragraph 0906d(3); or
- c. are referred to the Secretary of the Navy for decision.

The Council also oversees the proceedings of regional physical evaluation boards for uniformity and consistency of actions.

0902 Mission

To evaluate the physical fitness for active duty and to direct the disposition of personnel who are properly referred to the Council.

0903 Functions

- a. Act as the third and, normally, the final level of Department of the Navy physical disability evaluation.
- b. Consider the cases of active duty personnel, personnel on the Temporary Disability Retired List, inactive duty Reservists, and others who are properly referred for consideration as the result of:

- (1) recommendations made in the records of formal hearings of regional physical evaluation boards;

- (2) requests from the Secretary of the Navy, the Director, Naval Council of Personnel Boards, and the Board for Correction of Naval Records;

- c. Evaluate on the basis of recommended findings of regional physical evaluation boards the case records of members referred to the Council for physical disability evaluation:

- (1) physical fitness (or physical qualification in case of an inactive duty member of the Naval or Marine Corps Reserve) of a member for active duty;

- (2) if found unfit because of physical disability, the entitlement of the member to benefits authorized by chapter 61 of title 10, United States Code;

- d. Issue final decisions for the Secretary of the Navy as to the fitness (or physical qualification in the case of an inactive duty member of the Naval or Marine Corps Reserve) for active duty and the disposition of members whose cases fall within the purview of the Council as set forth in this manual.

- e. Conform to the statutes and directives of higher authority and with the departmental guidance expressed in this manual.

- f. Review all special interest cases and refer them, with appropriate recommendations, to the Secretary of the Navy via the Director, Naval Council of Personnel Boards.

- g. Refer, following final disability evaluation, requests for limited duty status from active duty members being evaluated to the Chief of Naval Personnel or the Commandant of the Marine Corps.

- h. Monitor the performance of the Disability Evaluation System with specific attention to obtaining reasonable consistency in the procedures and actions of regional physical evaluation boards.

i. Exercise general supervision of a system of records which includes workcards, minimum residual case files consisting of records of proceedings and findings, and copies of notifications of case dispositions issued to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

j. In accordance with SECNAV Instruction 5211.5C, protect the privacy of individuals whose records are reviewed.

k. Maintain liaison in disability matters not involving formulation of policy with:

- (1) the Commandant of the Marine Corps;
- (2) the Chief of Naval Personnel;
- (3) the Chief, Bureau of Medicine and Surgery;

- (4) the Veterans Administration;
- (5) Naval medical facilities;
- (6) regional physical evaluation boards;
- (7) the Board for Correction of Naval Records.

0904 Organization

a. Composition

(1) The Council shall be composed of three members, a Navy line officer, a Marine Corps officer and a Medical Corps officer, all of them career military officers selected on the basis of wide medical and/or military experience, proven performance and education.

(2) The President of the Council shall be a Navy line or Marine Corps officer in the grade of O-6 or above.

(3) The remaining membership shall be of O-5 or O-6 grade with preference given to the latter.

(4) The composition of the Council shall be consistent and shall not be altered by reason of the grade, status or organization of a member undergoing disability evaluation, except by specific direction of the Director, Naval Council of Personnel Boards.

b. Administrator. The senior Navy line or Marine Corps member shall be designated as Administrator and shall be responsible for the leadership and management of day to day Council affairs.

c. Recorder. A recorder shall be permanently assigned to the Council. He shall be a Navy or Marine Corps officer of the grade O-3.

d. Alternate members

(1) In the absence of a principal member, an alternate member may continue the business of the Council. However, the use of alternates shall be limited as much as possible to preserve the equitability and consistency of Council actions.

(2) The Commandant of the Marine Corps, the Chief of Naval Personnel and the Chief, Bureau of Medicine and Surgery shall designate in advance and provide alternate Council members as requested by the Director, Naval Council of Personnel Boards.

e. Reserve membership. At least one member of the Council shall be a Reserve officer in each case in which a Reserve member is undergoing physical disability evaluation.

0905 Legal Assistance

The Council shall be provided such legal assistance as it requires in its deliberations by the Judge Advocate General's Corps officers assigned to the Headquarters, Naval Council of Personnel Boards.

0906 Procedures

a. Operating schedule. The Council shall meet in daily session.

b. Conduct of evaluations

(1) Reviews shall be based upon documents associated with each case. Where the Council makes substitute findings, or where a member does not agree with the findings of a regional board, the Council review shall include the contents of the full hearing transcript or the hearing tape recording.

(2) Under no circumstances shall Council members engage in discussion with members whose cases are under review, their counsel or representatives regarding their cases. The creation of any inference of undue influence or partiality in Council reviews shall be scrupulously avoided.

(3) Each Council member shall act on the oath or affirmation set forth in Attachment (I) to Appendix E.

c. Decisions

(1) Decisions of the Council shall be based on review of:

(a) medical board reports and associated documents together with endorsements of convening authorities and statements of members referred for disability evaluation;

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(b) line of duty/misconduct determinations when applicable and as required by the Manual of the Judge Advocate General (JAGINST 5800.7B), chapter VIII;

(c) statements of service supplied by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate;

(d) reports of periodic physical examination of personnel carried on the Temporary Disability Retired List;

(e) reports of special consultations, when requested by the Council;

(f) Records of proceedings of formal hearings by regional physical evaluation boards;

(g) statements of non-medical information as to the observation by the reporting senior of performance of duty of the member being evaluated;

(h) when required by the Council, fitness reports and performance evaluations supplied by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, as they apply to disability evaluation;

(i) any other pertinent matters.

(2) The Council shall ensure that it has available the necessary information for competent decision, remanding cases or requesting additional information as required.

(3) In arriving at its findings, the Council shall comply with:

(a) applicable statutes and directives of higher authority;

(b) departmental guidance expressed in this manual;

(c) the Veterans Administration Schedule for Rating Disabilities;

(4) Decisions shall be reached through a simple majority of the three members voting.

(5) The Council will not make revision of physical evaluation board recommended findings except when the evidence in the record is so clear and compelling as to require revision, or accepted medical principles preclude a reasonable possibility of the correctness of the physical evaluation board's recommended findings.

(6) Council shall determine in its findings:

(a) That the member is physically fit for active duty, or unfit because of physical disability;

(b) If the member is unfit:

1. The disability (was) (was not) (incurred) (aggravated) while the member was entitled to receive basic pay;

2. The disability (is) (is not) the result of intentional misconduct or willful neglect, and whether such disability (was) (was not) incurred during a period of unauthorized absence;

3. (Select appropriate finding)

a. The disability (is) (is not) the proximate result of active duty or inactive duty training (because of aggravation (when applicable)), or

b. The disability (was) (was not) incurred in line of duty in time of war or national emergency, or

c. The member has over eight years of active service, or

d. The disability (was) (was not) incurred after 14 September 1978;

4. The disability (is) (may be) permanent; and

5. The disability is ratable at (percentage) in accordance with the Veterans Administration Schedule for Rating Disabilities.

(c) When the member is an inactive duty reservist who has not been issued a Notice of Eligibility for Disability Benefits due to an injury (or disease, in those members ordered to active duty for training for more than 30 days other than active duty for training under 10 U.S.C. 270(b)) in accordance with SECNAVINST 1770.3 the only findings to be made are:

1. physically qualified or not physically qualified for active duty in the Naval or Marine Corps Reserve;

2. if not physically qualified (and the case arises under 10 U.S.C. 1004), that the disability (is) (is not) due to intentional misconduct or willful neglect.

(7) Each finding made pursuant to Part IX of this manual, which is concurred in by a majority of the Council, shall constitute the action of the Council. Any dissenting member of the Council shall make a minority report concerning those particulars in which he does not agree with the action of the Council. The report shall be attached as part of the record of proceedings. Reference shall be made to the attachment in the space provided for minority findings on NAVSO 6100/22 (Appendix H).

(8) Findings shall be set forth in the Council's records of proceedings and findings and shall be signed by the President of the Council and the Recorder.

(9) Votes of individual members shall be

recorded in the Council's records of proceedings and findings.

(10) It is essential that the record clearly reflect facts sufficient to form the basis for the findings. When making substitute findings the Council shall state in the record the basis for its conclusions.

(11) The Council may, on its own initiative, take no action on the findings of a physical evaluation board and send the case to a medical board for further study; or to a regional physical evaluation board for a hearing in revision for correction of errors, or for further development of the case or for reconsideration of its recommended findings or to an evaluation board comprised of different members for another hearing, or to an evaluation board in a different area for another hearing.

d. Disposition of cases following Council actions. Disposition will vary depending upon whether Council findings are in agreement with physical evaluation board findings and whether Council findings are adverse to the member in the sense of paragraph 0210 of this manual.

(1) If the Council findings are in agreement with regional physical evaluation board findings, the case may be concluded.

(2) If the Council arrives at substitute findings from those of a regional physical evaluation board, and the substitute findings are not adverse to the member, the case may be concluded on the basis of the substitute findings.

(3) If the Council arrives at substitute findings from those of a regional physical evaluation board which are adverse to the member, the member shall be accorded the opportunity to accept or rebut the findings. Should the member accept the adverse findings the case may be concluded on the basis of the adverse findings. Should the member submit a timely rebuttal, the case will be reconsidered by the Physical Review Council. Should the Physical Review Council not receive a rebuttal within fifteen (15) days after transmittal of the member's copy of the adverse findings of the Physical Review Council, the case shall be referred to the Naval Physical Disability Review Board for review.

(4) In special interest cases, if the Council arrives at substitute findings from those of the Central Physical Evaluation Board and the substitute findings are acceptable to the member so that he does not request a formal personal hearing, the

case may be concluded on the basis of the substitute findings.

(5) In special interest cases, if the Council arrives at substitute findings from those of the Central Physical Evaluation Board which were subsequently agreed to by the member, the member shall be accorded the opportunity for a formal personal hearing by a regional physical evaluation board.

e. Format of the record of proceedings

(1) The proceedings and findings of the Physical Review Council in each case shall be recorded in summary form using NAVSO Form 6100/22 (Appendix H). Detailed case analyses shall not normally be prepared in conjunction with evaluation by the Physical Review Council.

(2) A complete record of proceedings, including the summary of proceedings and findings and all documents which were considered by the Council in its deliberations shall be assembled as indicated in Attachment (2) to Appendix F.

f. Transmittal of the record of proceedings

(1) All records of proceedings that involve final departmental action in physical disability evaluation shall be initially transmitted to the Judge Advocate General for legal review under the provisions of 10 U.S.C. 5148.

(2) Following a determination by the Judge Advocate General that legal objection to the final departmental action does not exist, the complete record shall be returned to the Physical Review Council for final departmental action in each case.

(3) Ultimate disposition of the records of proceedings following final departmental action shall be in accordance with the provisions of Appendix J of this manual.

g. Notifications of decisions to service personnel manager. Upon determination by the Judge Advocate General of the absence of legal objection to Council findings, the findings shall be issued by the Council as final decisions in each case. The President of the Council, acting for the Secretary of the Navy, shall approve the findings and direct final disposition consistent with the findings.

(1) Notifications of decisions to the Chief of Naval Personnel and the Commandant of the Marine Corps, as appropriate, shall normally be made via inter-office mail.

(2) Notifications of decisions shall bear the personal signatures of the President and the Recorder.

h. Decisions in cases involving requests for limited duty. Council decisions as to final disposition of a member undergoing physical disability evaluation shall be withheld in cases involving requests for limited duty so as to permit referral to the Commandant of the Marine Corps or the Chief of Naval Personnel. The personnel manager concerned shall decide whether it is in the best interest of the respective service to retain the member on active duty in a limited duty status. Such decisions shall normally be made within 20 days. Where the decision for limited duty is affirmative, final disability evaluation and disposition shall be withheld until termination of the stipulated period of limited duty at which time the Council will undertake final evaluation and direct final disposition of the member in accordance with the provisions of this manual. Where the decision for limited duty is negative final disability evaluation and disposition shall proceed in accordance with the provisions of this manual.

i. Decisions in special interest cases. In special interest cases the Council shall make recommended findings and refer them to the Secretary of the Navy via the Director, Naval Council of Personnel Boards for final decision. Upon receipt of the Secretary's decision in these cases, the Physical Review Council shall issue them in the manner stated in subparagraph g above.

j. Decisions in cases involving concurrent consideration of disability and discipline. In those cases involving the potential for either disciplinary or disability disposition where the recommended finding of the regional physical evaluation board is "fit" and is concurred in by the Council, the Council shall take final action. When the recommended findings of the regional physical evaluation board include "unfit" and the Council concurs, the Council shall defer its decision as to disposition of the member and shall refer the case to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for the resolution of the disciplinary action. When the Council makes adverse substitute findings which are not accepted by the member the disposition of the case shall be as directed in paragraph 0906d(3).

k. Revisions in notifications of Council deci-

sions. The President of the Physical Review Council may modify or cancel notifications to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, of Council decisions and direct appropriate substitute disposition in those cases in which there is determined to have occurred a clerical or mathematical error in the record of proceedings, or the member has been discharged under other provisions of law. Provided retirement or separation has not been effected by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, the President may also modify or cancel notifications of decisions in those cases where the member has been rehospitalized or, in special interest cases, has demanded a formal hearing after having previously accepted the findings of the Central Physical Evaluation Board.

l. Records

(1) A workcard (NAVSO 6100/15 or NAVSO 6100/3, as appropriate) shall be prepared in each case. (Appendix H). Workcards shall be annotated and initialled by each Council member voting and shall be retained as part of the NCPB Headquarters residual case file.

(2) Upon completion of disability evaluation in each case, the Council shall establish a permanent record of proceedings consisting of:

(a) the medical board report and associated records and correspondence;

(b) Central Physical Evaluation Board findings together with associated correspondence, if applicable;

(c) Regional physical evaluation board findings, if applicable;

(d) Physical Review Council action together with associated correspondence.

m. Referrals from the Board for Correction of Naval Records

(1) The Board for Correction of Naval Records will from time to time request comments and recommendations on specific cases under its cognizance.

(2) Board for Correction of Naval Records requests shall be accommodated using procedures that adhere as closely as possible to the decisional procedures of this manual.

Summary of Substantive Changes

a. The Disability Evaluation Manual 1982, a complete revision of the Disability Evaluation Manual 1977, is designed, by the reformatting of its component parts, to facilitate access and use by persons not intimately familiar with the Disability Evaluation System. The Disability Evaluation Manual 1982 incorporates all previously promulgated advance changes, to include the elimination of "Death Imminent" procedures and the automatic granting, upon demand, of a formal hearing following a finding that the member is fit for duty.

b. The Disability Evaluation Manual 1982 incorporates current standards for determining mental responsibility and provides more specific guidance for the administrative removal of certain members from the Temporary Disability Retired List. The Disability Evaluation Manual 1982 is designed to ensure: consistency in notification and rebuttal procedures, when required, in the various stages of processing; that the procedures are understood to be administrative vice adversary in nature; and that the assignment of counsel for the member is not perceived as creating a responsibility extending past the time of final action on a case within the Disability Evaluation System.



30 March 1982

Part I

AUTHORITY FOR DEPARTMENTAL PHYSICAL DISABILITY EVALUATION

0101 Statutory Responsibility and Authority

a. 10 U.S.C. 1216 (1976) is quoted, in part, as follows:

“(1) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(2) Except as provided in subsection (d) of this section, the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of —

(a) the fitness for active duty of any member of an armed force under his jurisdiction;

(b) the percentage of disability of any such member at the time of his separation from active duty;

(c) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(d) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(3) The Secretary concerned or the Administrator of Veterans' Affairs, as prescribed by the President, has the powers, functions and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(4) The Secretary concerned may not, with respect to any member who is in pay grade O-7 or higher or is a Medical Corps officer or medical officer of the Air Force being processed for retirement under any provision of this title by reason of age or length of service —

(a) retire such member under section 1201 of this title;

(b) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

(c) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health Affairs.”

b. Other Pertinent Sections of the United States Code

(1) Appendix B is a compilation of statutes which relate to the Disability Evaluation System.

(2) 10 U.S.C. 5148(d) is quoted as follows:

“(d) The Judge Advocate General of the Navy, under the direction of the Secretary of the Navy, shall —

(1) perform duties relating to legal matters arising in the Department of the Navy as may be assigned to him;

(2) perform the functions and duties and exercise the powers prescribed for the Judge Advocate General in Chapter 47 of this title;

(3) receive, revise, and have recorded the proceedings of boards for the examination of officers of the naval service for promotion and retirement; and

(4) perform such other duties as may be assigned to him.”

The responsibility assigned in 10 U.S.C. 5148 (d) (3) above shall apply to all disability retirements.

0102 Direction and Policy of Higher Authority

a. Department of Defense Directive 1332.18 of 9 September 1968, enclosure (1) to SECNAVINST 1850.3B.

This comprehensive directive sets forth uniform interpretation of laws relating to separation from the military service by reason of physical disability.

b. Deputy Secretary of Defense memorandum "Physical Disability Separations" dated 29 January 1973.

This memorandum promulgates further guidelines pending anticipated publication of a change to Department of Defense Directive 1332.18, enclosure (1) to SECNAVINST 1850.3B.

c. Deputy Secretary of Defense memorandum "Physical Fitness Determinations" dated 1 March 1973.

This memorandum promulgates further guidelines relating to determinations of unfitness that would result in physical disability retirement of a general/flag rank officer, or of a Medical Corps officer.

0103 Delegation of Discretionary Authority to Act for the Secretary

a. Excluding any cases designated by the Secretary, the President of the Central Physical Evaluation Board, acting for the Secretary, shall, upon acceptance by the member, promulgate the findings of the Board and shall direct final disposition consistent with those findings. In those cases in which the Commandant of the Marine Corps/

Chief of Naval Personnel has recommended the administrative removal of a member's name from the TDRL, acceptance by the member is not required. In executing his delegated responsibility the President shall be governed by the limitations and other provisions prescribed in Part VII of this manual.

b. Excluding any cases designated by the Secretary, the President of the Physical Review Council, acting for the Secretary, shall promulgate the findings of that Council and shall direct final disposition consistent with those findings. In executing this responsibility the President shall be governed by the limitations and other provisions prescribed in Part IX of this manual.

c. Excluding any cases designated by the Secretary, the Director, Naval Council of Personnel Boards shall act for the Secretary upon disability evaluation cases reviewed by the Naval Physical Disability Review Board subsequent to unaccepted adverse substitute findings by the Physical Review Council and cases referred to him on appeal from final action by the Central Physical Evaluation Board and the Physical Review Council and shall approve the findings of boards constituted by him to assist in appellate review, directing disposition consistent with those findings. In executing this responsibility the Director shall be governed by the limitations and other provisions prescribed in Part X of this manual.

Part II

POLICY PERTAINING TO DISABILITY EVALUATION

0201 General

The evaluation of physical disability shall have as its objectives:

- a. the maintenance of a physically fit and combat ready Navy and Marine Corps, including Reserve components;
- b. equitable consideration of the interests of the government and individual service members.

0202 Exclusions from Compensation

When unfitting physical disability occurs together with one or more of the situations in this paragraph, the member will be excluded from receiving benefits under 10 U.S.C. chapter 61:

a. Not in line of duty

(1) General rule. Disease or injury incurred by naval personnel while in active service will be considered to have been incurred "in line of duty" except when incurred under one or more of the following circumstances:

- (a) as the result of the person's misconduct or willful neglect;
- (b) while avoiding duty by deserting the Service;
- (c) during a period of unauthorized absence (see paragraph 0202c);
- (d) while confined under sentence of a court-martial which included an unremitted dishonorable discharge, or
- (e) while confined under sentence of a civil court following conviction for an offense which is defined as a felony by the law of the jurisdiction where convicted.

(2) "Active service" as used in this paragraph includes full-time duty in the naval service, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training.

(3) Presumption. It is presumed that a disease or injury suffered by a member of the naval service was incurred in line of duty. Clear and convincing evidence is required to overcome this presumption.

b. Misconduct

(1) Intentional misconduct or willful neglect. "Intentional misconduct" and "willful neglect" as used in 10 U.S.C. chapter 61 are descriptive of "misconduct" as defined herein.

(2) Generally speaking, misconduct is wrongful conduct. Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. To support a finding of misconduct it must be established by clear and convincing evidence that the disease or injury was either intentionally incurred or was the proximate result of such gross negligence as to demonstrate a reckless disregard of the foreseeable consequences. If a resulting disease or injury is such that it could have been reasonably foreseen from the course of conduct and did in fact result from such conduct, it is said to be a "proximate result".

(3) Presumption. It is presumed that disease or injury suffered by a member of the naval service is not the result of his own misconduct. Clear and convincing evidence is required to overcome this presumption.

(4) Examples. If an individual intentionally wounds himself with a firearm, the injury is due to his own misconduct. If an individual handles a firearm in a grossly negligent manner and thereby wounds himself, that too would be an injury due to his own misconduct because a wound is a reasonably foreseeable result of the grossly negligent handling of firearms. If, on the other hand, an individual was standing on a sidewalk and, while handling a firearm in a grossly negligent manner, was struck by an automobile which had gone out of control, the injuries would not be due to his

own misconduct because they would not have a reasonably foreseeable result (proximate result) of the wrongful conduct in which the individual was engaged. In this latter example, the injuries are said to be the result of an independent intervening cause. The fact that the conduct violates a law, regulation, or order, or the fact that the conduct is engaged in while the individual was intoxicated does not, of itself, constitute a basis for a determination of misconduct. Such circumstances should, however, be considered along with all other facts and circumstances in determining whether the conduct of the individual was grossly negligent and whether the disease or injury was reasonably foreseeable as a probable result of such conduct.

c. Unauthorized absence. Any absence from duty without authority such as contemplated under Articles 85 and 86 of the Uniform Code of Military Justice (10 U.S.C. chapter 47) shall be deemed to have been an unauthorized absence. When a disability is incurred at any time during a period of unauthorized absence, regardless of whether the absence interfered with the member's military duties, the member is excluded from receiving benefits under 10 U.S.C. chapter 61.

d. Unreasonable refusal of medical, dental, and surgical treatment

(1) Refusal of treatment. If a member unreasonably refuses to submit to medical, dental or surgical treatment, any unfitting disability that proximately results from such refusal shall be deemed to have been incurred as a result of the member's own misconduct. Refer to paragraph 18-15, Manual of the Medical Department.

(2) Venereal disease. Any disability resulting from venereal disease shall not support a misconduct finding if the member has complied with regulations requiring him to report and receive treatment for such disease. Refer to the Naval Military Personnel Manual 3420184.1g and Marine Corps Separation and Retirement Manual P1900.16B subparagraph 6016.1h.

e. Intoxication and drug-induced disease

(1) Intoxication. Any injury incurred as the proximate result of prior and specific voluntary intoxication is incurred as the result of misconduct. However, a finding of misconduct may only be made when:

(a) it can be clearly shown that the member's physical or mental faculties were impaired;

(b) the extent of impairment can be clearly determined, and

(c) it is clear that such impairment was the proximate cause of injury.

(2) Alcohol and drug-induced disease. Inability to perform duty resulting from disease, which is directly attributable to a specific, prior, proximate, and related intemperate use of alcoholic liquor, or habit-forming drugs, shall be categorized as the result of misconduct. Habituation may or may not be associated with a specific inability to perform duty which is directly due to the specific and proximate use of alcohol or drugs (see Article 1151, U.S. Navy Regulations). (Controlled substances are listed in title 21, Code of Federal Regulations, Chapter II, Part 1308.)

(a) Alcohol-induced diseases. An alcohol-induced disease is the result of misconduct, if:

1. according to recognized medical knowledge, it is the direct and foreseeable result of the intemperate use of alcohol;

2. the service member has been referred to a treatment and rehabilitation program for alcoholism at a time when the disease was preventable or treatable; and

3. the service member has failed to complete the rehabilitation program successfully within a reasonable period of time, with reckless disregard for the fact that his continued use of alcohol will cause or aggravate the disease.

(b) Drug-induced diseases

1. If a disease, such as hepatitis, cannot be directly attributed to a specific, prior, proximate, and related intemperate use of a drug, it must be considered not due to misconduct.

2. An individual will not be held responsible for his acts or their consequences if they result from mental disease. It must be determined therefore whether the drug use was a consequence of mental illness or the drug use was voluntary and brought on the mental illness. If a result of voluntary use or abuse, the findings may be misconduct and not compensable depending on the other circumstances involved; if a consequence of mental illness, no misconduct is involved. However, a determination that drug use was a consequence of mental illness would, by the same rationale, tend to establish the existence of mental illness prior to service in those cases where intemperate use of drugs prior to service is admitted by the member. Brief experimentation with marijuana would not, in itself, meet this criterion.

30 March 1982

**0203 Injury Cases — Line of Duty/
Misconduct Determinations**

a. In each case in which a member of the naval service incurs an injury which might result in a permanent disability or which results in his physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation), findings concerning line of duty and misconduct shall be made.

b. It is the responsibility of the commanding officer or officer in charge of the individual concerned at the time of incurrence of an injury or disease to convene the necessary investigation or to take other appropriate action.

c. It is presumed that injury or disease suffered by a member of the naval service is *not* the result of his own misconduct. *Clear and convincing evidence is required to overcome this presumption.*

d. In cases wherein a competent line of duty investigation was not conducted, and it is reasonably apparent that one subsequently conducted will not produce material evidence to overcome the presumption that the injury was incurred in line of duty, the presumption that the injury was incurred in line of duty and was not the result of misconduct will apply.

**0204 Mental Competency vs. Personal
Accountability**

a. General rule. A member may not be held responsible for his acts and their foreseeable consequences if, at the time of commission of such acts, as a result of mental disease or defect, he lacked substantial capacity either to appreciate the wrongfulness of such acts, or to conform his conduct to the requirements of law or regulation. As used in this subparagraph the terms "mental disease" and "defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Thus, an injury which was the proximate result of acts performed while the member was mentally impaired as a result of voluntary ingestion of an hallucinogenic drug would be deemed to have been incurred as a result of the member's own misconduct since certain properties of such drugs are notorious and their use is prohibited by Article 1151, U.S. Navy Regulations 1973.

b. Presumption. In the absence of evidence to the contrary, there is a presumption that all persons are mentally competent and thus responsible for their acts. Clear and convincing evidence is required to overcome this presumption.

c. Suicide attempts. In view of the strong human instinct for self-preservation, a bona fide suicide attempt, as distinguished from other acts of intentional self-injury, shall be considered to create a strong inference of lack of mental responsibility. In each instance of an attempted suicide, the member concerned shall undergo psychiatric examination, and the report of that examination shall be included in the medical board report submitted for physical disability evaluation.

d. Intentional self-inflicted injury. An intentional self-inflicted injury other than suicide discussed above, is deemed to be incurred as the result of the member's own misconduct, unless lack of mental responsibility is otherwise shown.

**0205 Mental Competency to Manage
Financial Affairs**

a. Whenever any member presents, or is alleged to present, a medical condition or mental disorder that may impair judgment, a determination of mental competency shall be made. Such determination shall be made by a medical board convened and constituted in accordance with 37 U.S.C. 602 as described in the Manual of the Medical Department 18-8(5). Such a medical board shall consist of three members, one of whom shall be a psychiatrist.

b. As provided by the Manual of the Medical Department 18-22(5) when each of the following has been diagnosed, the report of a properly constituted medical board shall contain a statement concerning the member's competency to manage his own affairs:

- (1) all psychoses;
- (2) organic brain disorders when the board's report indicates impairment of judgment;
- (3) psychoneuroses, severe, where possible impairment of judgment is indicated;
- (4) any case in which a member has previously been declared incapable of managing his own affairs;
- (5) all psychiatric cases of sufficient severity to require further hospitalization.

0206 Mentally Incompetent Members

a. In those cases where a member has been found mentally incompetent, the findings of the Central Physical Evaluation Board shall be forwarded, without exception, to the appropriate regional physical evaluation board.

b. The member shall be represented by a designated military counsel, certified in accordance with Article 27(b), Uniform Code of Military Justice, who shall fully inform the court-appointed guardian, or, if no guardian has been appointed by a court, the member's spouse or next of kin, of the legal and factual issues in the case and shall act in accordance with the wishes of the guardian, spouse or next of kin, as appropriate, if those wishes do not conflict with the proper exercise of the responsibilities of the counsel.

c. If the findings of the Central Physical Evaluation Board are accepted by the guardian, spouse or next of kin, no formal hearing will be conducted.

d. If the guardian, spouse or next of kin, fails to accept the findings of the Central Physical Evaluation Board for the member within fifteen days, the case will be scheduled for a full and fair hearing.

0207 Evaluation of Unfit for Active Duty

a. A member is "unfit because of physical disability" when he is unable, because of disease or injury, to perform the duties of his office, grade, rank, or rating in such a manner as to reasonably fulfill the purpose of his employment on active duty.

b. The mere presence of physical disability does *not*, in itself, require a finding of unfitness. In each case considered, it is necessary to correlate the nature and degree of functional impairment produced by physical disability with the requirements of the duties to which the member may reasonably expect to be assigned by virtue of his office, grade, rank, or rating (excluding special hazardous duty, such as duty involving flying, etc., but giving due consideration to the requirements of other potential sea or combat assignments).

c. A member who has an impairment which renders him unable because of physical disability to perform the duties to which he would normally be assigned by virtue of his office, grade, rank or

rating may be considered to be unfit for duty, even though he may be physically capable of performing all of his duties at the moment. Conversely, a member convalescing from an illness or an injury, and who is likely to recover to a degree which would permit him to perform all of his duties in the near future, will be considered to be fit for duty.

d. In determining whether a member is unfit because of physical disability, consideration will be given only to evidence which is relevant to the issues set forth in subparagraphs a, b, and c above. Specifically, it is that which relates to either the nature and degree of functional impairment currently suffered because of physical disability; the requirements of the duties to which the member might reasonably expect to be assigned; the physical ability of the member to perform the requirements of the duties to which he may be assigned; or the weight to be accorded to other evidence related to the foregoing issues. Among the factors which shall not be considered and which have no bearing on this determination are the following: the ability or inability of the member to meet physical standards for hazardous duty, or enlistment, or appointment, or transfer to a different component within the naval service, or for transfer to a different category within the naval service; the need of the service for special skills possessed by the member; or the fact that disciplinary action (civil or military) is pending against the member. Mere inability to pass a physical fitness (exercise) test will not be considered unfitting.

0208 Conditions Not Constituting Physical Disability

Only those conditions which constitute physical disabilities shall be considered in the disability system. If a medical board reports to the disability system a condition or defect not constituting a physical disability (see Appendix A, paragraph 7) which may render a member unsuitable for military service, the medical board report shall be referred without finding to the Chief of Naval Personnel or Commandant of the Marine Corps, via the Chief, Bureau of Medicine and Surgery, as appropriate, for administrative action. If a medical board reports condition(s) that are physical disabilities and conditions or defects not physical disabilities, only the former shall be con-

sidered in determining the member's fitness for duty. If not unfit due to physical disabilities, the cases will be forwarded for departmental action as described above unless the member demands a full and fair hearing.

0209 Duration of Disability — Permanent vs. Temporary

For the purposes of this manual a disability is of a permanent nature, if, within five years of the initial determination of unfitness, based upon accepted medical principles:

- a. the member cannot reasonably be expected to recover so as to be physically fit to perform the duties of his office, grade, rank or rating; and
- b. the disability rating as established under the Veterans Administration Schedule for Rating Disabilities in use at the time of the initial determination under this section cannot reasonably be expected to increase or decrease so as to change or terminate the amount of disability retired pay to which the member would be entitled.

0210 Administrative Due Process — Evaluations/Actions Which Must be Referred to Members

A number of possible evaluations/actions by their nature must be regarded as potentially objectionable to a member and therefore of substantial interest to him. These shall collectively be referred to as adverse findings. In the interest of providing administrative due process, such matters, other than those involving the administrative removal of a member's name from the TDRL upon the recommendation of the Commandant of the Marine Corps/Chief of Naval Personnel, shall be referred in every instance to the member for his concurrence/comment. Included are those which:

- a. would retire the member permanently for physical disability in lieu of being placed on the Temporary Disability Retired List;
- b. would separate the member for physical disability, with or without severance pay, in lieu of temporary or permanent retirement for physical disability;
- c. would separate the member for physical disability without severance pay, in lieu of separation for physical disability with severance pay;
- d. would decrease (below 80 percent) the percentage of disability at which the member will be

temporarily or permanently retired for physical disability;

e. would change a recommendation of "fit for duty" or its equivalent under paragraph 2 of Appendix D to a recommendation of "unfit for duty" or its equivalent under paragraph 2 of Appendix D, unless member or his counsel specifically requested a finding of "unfit for duty";

f. would change a recommendation of "unfit for duty" or its equivalent under paragraph 2 of Appendix D to a recommendation of "fit for duty" or its equivalent under paragraph 2 of Appendix D, unless the member or his counsel specifically requested a finding of "fit for duty";

g. would retire the member temporarily in lieu of permanently;

h. would add an EPTE determination or revise an assigned EPTE determination which may affect ultimate benefits;

i. would add a diagnosis of a psychiatric nature not mentioned in the medical board report referring the member's case to a physical evaluation board.

0211 Evaluating the Time of Inception of a Disabling Disease/Injury

In accordance with accepted medical principles in some cases the existence of a disease or injury prior to entrance into service may be presumed, and no further additional confirmation is needed. Notation or discovery during service of residual conditions such as scars, fibrosis of the lungs, atrophy following disease of the central or peripheral nervous system, healed fractures, absent, displaced, or resected parts or organs supernumerary parts, or congenital malformations with no evidence of the pertinent antecedent active disease or injury during service, can be considered as established facts which are so convincing as to impel the conclusion that the residual condition existed prior to entrance into active service in the absence of further proof. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close to that date that the disease could not have originated in so short a period, impels the conclusion that the disease existed prior to entrance into active service in the absence of further proof.

- a. Inception of disease or injury

(1) Determinations concerning the inception of disease or injury, not noted upon entry, should not be based on medical judgment alone, as distinguished from accepted medical principles, or on history alone, without regard to clinical factors pertinent to the basic character, origin and development of such disease or injury. This determination should be based on thorough analysis of the entire evidentiary showing in the individual case and a careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of such disease or injury. History conforming to accepted medical principles pertaining to such disease or injury should be given due consideration, in conjunction with basic clinical data concerning the manifestation, development, and nature of such disease or injury, and accorded probative value consistent with accepted medical principles in relation to other competent evidence in each case. All material evidence relating to the incurrence, symptoms, and course of the disease or injury, including official and other records made prior to and during service, together with all other evidence concerning the inception, development, and manifestations of such disease or injury, should be taken into full account.

(2) Conditions of infectious origin are to be considered with regard to the circumstances of infection and the incubation period. Manifestations of disease within less than the minimum incubation period after entry into active service will be accepted as proof of inception prior to service.

(3) In cases involving mental disorders diagnosed in service on the basis of manifestations shown in service, situational disturbances characteristic of life-long maladaptive patterns of behavior and indicative of personality disorders, recurrent or chronic neuroses, and other psychiatric symptoms of long standing should be considered in determining whether the psychiatric condition existed prior to service. When the conclusion that the mental disorder of a psychotic member existed prior to service is based upon a past history of aberration elicited from the member, the record must show that the member had the capacity to recollect and narrate the history in a trustworthy manner and that such history is reliable and not a manifestation of his illness. When the ability of a member to recollect and narrate the history in a

trustworthy manner is questionable, corroborative information must be obtained.

b. Presumptions

(1) Every person employed in active service shall be presumed to have been in sound condition when examined, accepted, and enrolled for service, except as to physical disabilities recorded at the time of the examination, acceptance, and enrollment, or where medical evidence or principles demonstrate that the disease or injury existed prior to acceptance and enrollment. A notation of preservice existence of a physical disability, recorded at the time of the examination for acceptance may be considered, together with all other material evidence, in determinations as to the incurrence of such physical disability.

(2) It is further presumed that any additional disability resulting from the pre-existing injury or disease was caused by military service aggravation. Only specific findings of "natural progress" of the pre-existing injury or disease based upon well-established medical principles, as distinguished from medical opinion alone, are sufficient to overcome the presumption of military service aggravation.

(3) Acute infections, such as pneumonia, active rheumatic fever (even though recurrent), acute pleurisy, acute ear disease; and sudden developments like hemoptysis, lung collapse, perforating ulcer, decompensating heart disease, coronary occlusion, thrombosis, or cerebral hemorrhage, occurring while in military service, will be presumed as service incurred or service aggravated unless it can be shown by a preponderance of the evidence that there was no permanent increase in disability resulting therefrom during active military service.

c. Proximate result. A disease or injury, or aggravation thereof, resulting in physical disability, which, after consideration of all facts and circumstances of a particular case, may reasonably be assumed to be the effect of service, will be considered the proximate result of the performance of active duty or inactive duty training, as the case may be.

d. Aggravation by service

(1) Disease or injury noted prior to service, or which clearly had its inception prior to service, will be considered to have been aggravated, when such disability underwent an increase in severity during the service, unless such increase in severity is clearly shown to have been due to the natural

progression of the disease (see paragraph 0211b).

(2) The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other conditions incurred before entry into service, including postoperative scars and absent or poorly functioning parts or organs, do not constitute aggravation, unless the treatment was required to relieve disability which had been aggravated by service.

0212 Rating the Extent of Disability

a. General. The fact that a member is determined to be unfit for duty while on active duty may not be sufficient to entitle him to disability retirement or severance pay. There must be a determination that this unfitness is due to a disability incurred or aggravated while entitled to receive basic pay. The fact that such member was accepted physically for active duty is not conclusive that the disability was incurred after such acceptance. It is one piece of evidence to be considered with all the medical evidence. In addition to, and in conjunction with, all other pertinent medical evidence, due consideration and weight must be given to accepted medical principles, authenticated by medical authorities, in arriving at a final determination. It is not proper to exclude such accepted medical principles in making the aforesaid determination, even in cases where there is no other evidence that the disability existed prior to entrance upon active duty.

b. Use of the VA Schedule for Rating Disabilities. After a member's unfitness for military service has been established, the Veterans Administration Schedule for Rating Disabilities, as modified by enclosure (3) of DOD Directive 1332.18, (enclosure (1) to SECNAVINST 1850.3B) will be followed in rating the member's disabilities. No rating shall be recorded in those cases involving the administrative removal of a member's name from the TDRL.

c. Physical impairments which shall be rated. Once it has been determined that a member is unfit for duty and that the unfitting physical impairment is ratable, all other physical impairments meeting the rating criteria of the Veterans Administration Schedule for Rating Disabilities must be given an appropriate rating in accordance with DOD Directive 1332.18 (enclosure (1) to SECNAVINST 1850.3B). Those physical impairments that are determined to be unfitting in themselves

or to contribute to the member's unfitness will be identified on the reports of board findings to distinguish them from those impairments which, although rated, are not unfitting or do not contribute to the unfitness of the member.

d. Total disability. Total disability will be considered to exist when the member's impairment is sufficient to render it impossible for the average person to follow any substantially gainful occupation. Accordingly, in cases in which the VASRD does not provide a 100 percent rating under the appropriate (or analogous) VA Code, a member may be assigned a disability rating of 100 percent if his impairment is sufficient to render it impossible for him to follow a substantially gainful occupation.

e. Zero percent ratings. Occasionally a medical condition which causes or contributes to unfitness for military service is of such mild degree that it does not meet the criteria even for the lowest rating provided in the VA Schedule under the applicable code number. A zero percent rating may be applied in such cases even though the lowest rating listed is 10 percent or more, except when "minimum ratings" are specified. It should be noted that the zero percent rating does not preclude the award of compensation as prescribed by law for ratings of less than 30 percent.

f. Minimum ratings

(1) In some instances the VA Schedule provides a "minimum rating," without qualification as to residuals or impairment. Diagnosis alone is sufficient to justify the minimum rating. Higher ratings may be awarded in consonance with degree of severity, but no rating lower than the "minimum" may be used if the diagnosis is satisfactorily established.

(2) The VA Schedule provides for minimum rating for "residuals" in certain medical conditions. The instructions may be "rate residuals, minimum ____," or may specify what impairment to rate and give a minimum rating for that impairment. To justify the minimum rating for residuals, a functional impairment or other residual caused by the condition must exist. Otherwise a zero percent is appropriate.

g. Convalescent ratings. Under certain diagnostic codes, the Veterans Administration Schedule for Rating Disabilities provides for convalescent ratings to be awarded for specified periods of time without regard to the actual degree of impairment of function. Such ratings do not apply to the

military departments since the purpose of convalescent ratings is accomplished by other means under disability laws. Convalescence will ordinarily have been completed by the time optimum hospital improvement (for disposition purposes) has been attained. The ratings for observation periods, as distinguished from convalescence, such as those "for one year" following treatment for malignant neoplasm, are not affected by this paragraph.

h. **Pyramiding.** Pyramiding is the term used to describe the application of more than one rating to any area or system of the body when the total functional impairment of that area or system is adequately reflected under a single appropriate code. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent and special rules for their evaluation are included in appropriate sections of the VASRD. Related diagnoses should be merged for rating purposes when the VASRD provides a single code covering all their manifestations. This prevents pyramiding and reduces the chances of overrating. For example, disability from fracture of a tibia with malunion, limitation of dorsiflexion, eversion, inversion, and traumatic arthritis of the ankle would be evaluated under one VA Code, 5262, in accordance with the effect upon ankle function, with no separate evaluation for limitation of motion or traumatic arthritis.

0213 Referral of Cases to Formal Hearings

A formal hearing shall be conducted:

a. when the member (legal representative) who has been found unfit by the Central Physical Evaluation Board demands it;

b. when the member (legal representative) who has been found fit for duty *requests* a full and fair hearing (see paragraph 0403f and 0703g) and the request is granted by the Central Physical Evaluation Board or by the Director, Naval Council of Personnel Boards;

c. when the President, Central Physical Evaluation Board determines that a formal hearing is necessary in the best interests of the member or the Government (e.g., to document the testimony of witnesses or to clarify the official records);

d. whenever otherwise required under this manual; or

e. in certain cases when a member undergoing disability evaluation is incompetent to handle his

affairs. (See paragraph 0206.)

0214 Relief from Final Action Within the Disability Evaluation System

a. **General.** Upon promulgation of the proceedings and findings of the Central Physical Evaluation Board or the Physical Review Council by their respective presidents, the disposition of a case which has been evaluated in accordance with the limitations and other provisions of this manual becomes final. It may not be changed, modified, set aside or reopened within the Disability Evaluation System except as authorized in paragraphs 0706q and 0906k or upon one or more of the grounds and in the manner set forth in this paragraph.

b. **Clerical/mathematical errors.** Clerical errors or mathematical miscalculations in the record of proceedings which do not affect the disposition of an individual or change the computation of his disability compensation on the basis of percentage of disability may be corrected by the Director, Naval Council of Personnel Boards without notice. If the correction of the error would affect the disposition or so change the computation of disability retirement pay, the individual shall be given reasonable notice and afforded an opportunity to be heard, if he shall request it, before such correction is made. Relief sought by an individual under this subparagraph shall be by petition addressed to the Director, Naval Council of Personnel Boards.

c. **Grounds for relief.** Upon notice to the individual concerned and opportunity for hearing thereon or upon petition of the member concerned, the Director, Naval Council of Personnel Boards may, in his discretion, set aside the action of the Central Physical Evaluation Board or the Physical Review Council directing disposition of the member and direct new proceedings in his case for the following reasons:

(1) **Newly discovered evidence.** Upon the presentation of newly discovered evidence which by due diligence could not have been presented prior to the effective date of disposition of the individual concerned, which related to a fact in existence at the time of such disposition, which is not merely cumulative or corroborative and not such as to merely affect the weight of evidence or credibility of witnesses or records; and which would have warranted a different finding or ac-

tion had it been presented; newly discovered medical evidence to be accepted must be corroborated by competent medical authorities;

(2) Fraud, misrepresentation, or other misconduct. Upon a showing that the directed disposition of an individual was based upon fraud, misrepresentation of material fact, or other misconduct of such nature that in the absence thereof a different finding would have been made or a different action taken; and

(3) Mistake of law. Mistake of law is a basis for relief from final action, e.g., failure to accord an individual a full and fair hearing; a directed disposition which was without authority; a decision which is contrary to the great weight of evidence of record.

d. Procedure for seeking relief. Request for relief on the grounds set forth in subparagraphs b and c above may be made by the individual concerned, by his legal representative or counsel, or by any cognizant authority of the Naval Establishment, excluding the Director, Naval Council of Personnel Boards. Request will be by petition, filed within five years from the effective date of the disposition disputed, addressed to the Secretary of the Navy, and forwarded to the Director, Naval Council of Personnel Boards. No particular form is required. However, the petition must set forth the grounds for requesting relief and the relief desired; and, if the petition is based upon evidence which is not on record in the Department of the Navy, the evidence upon which it is based must be forwarded as an enclosure. When discharge has been executed, application should be made to the Board for Correction of Naval Records on DD Form 149.

0215 Continuance of Active Duty Members Unfit Because of Physical Disability

a. DOD Directive 1332.18, (enclosure (1) to SECNAVINST 1850.3B), Section V.H. sets forth basic DOD policy in this regard.

b. Upon the written request of a member found unfit for active duty, particularly one with 18 but less than 20 years of active service, the Secretary will consider deferring disposition of the member. This shall be with the provision that, although unfit because of physical disability, the member can still perform useful service with appropriate assignment limitation.

c. Members, particularly those with over 20 years of active service, shall not be continued on

active duty solely to increase their monetary benefits, nor shall they be continued unless their employment is justified as being of value to the naval service.

d. The phrase "serve with appropriate assignment limitations" means an assignment limitation based on the specific impairment involved in each individual case.

e. Each case involving limited duty shall be individually considered. Decisions are to be based on the individual needs of the service. No specific number of years of service shall be required to qualify an individual for consideration for retention.

f. For a member to be eligible for retention on active duty in a limited duty status, his disabling physical condition must be basically stabilized, or one in which accepted medical principles indicate a slow progression of the disabling impairment. The member must also be able to maintain himself in a normal military environment, without adversely affecting his health or the health of other members, or without requiring an inordinate amount of medical care.

g. The Central Physical Evaluation Board and the Physical Review Council shall refer requests for continuance on active duty to the Commandant of the Marine Corps or the Chief of Naval Personnel following disability evaluation and when such referral is in consonance with basic DOD policy and this manual.

h. The Commandant of the Marine Corps and the Chief of Naval Personnel may, with the member's consent, retain members found unfit because of physical disability when such retention is in consonance with basic Department of Defense policy and is in the best interests of the service and the individual.

i. In cases where unfit members are to be retained on active duty in a limited duty status, the Central Physical Evaluation Board and the Physical Review Council shall withhold final action on the disability findings and shall make appropriate entries in the records of proceedings as to disposition to limited duty status.

j. A member continued under these provisions shall be closely observed to assure that further continuance, or conversely separation, is consonant with the best interests of the service and the member. When a member becomes unable to perform his duties in a limited duty assignment, he shall be referred to a naval regional medical center

or naval hospital for observation, treatment and appropriate disposition. All members continued in a limited duty capacity shall be again referred to the Naval Disability Evaluation System for reevaluation at the completion of the prescribed period of active duty or at such time as the limited duty is otherwise terminated.

0216 Effective Date of Retirement/Separation

a. Unless the final disposition directed in a disability evaluation case specifies otherwise, the effective date of retirement/separation because of physical disability (either permanent or temporary) shall be normally within twenty days of issuance of the final decision.

b. The twenty-day elapsed time shall be regarded as a standard rather than an inflexible rule. Where exceptional circumstances prevail which would induce hardship on an individual or render retirement/separation infeasible within the standard period, the standard may be exceeded.

c. A final decision shall be construed as having been issued when the responsible authority signs the letter of notification of decision to the Commandant of the Marine Corps or the Chief of Naval Personnel.

0217 Option to Waive Disability Retirement/Separation

a. A member who meets all prerequisites for retirement/separation because of physical disability, but who is also qualified for retirement for other reasons, or transfer to the Fleet Marine Corps Reserve or the Fleet Reserve, may request that he be retired/transferred for reasons other than disability.

b. To pursue this retirement option, the member found to be unfit must submit a special request to the Secretary of the Navy in a timely manner prior to the effective date of his disability retirement. The request shall be forwarded via the Director, Naval Council of Personnel Boards.

c. To pursue the transfer to the Fleet Marine Corps Reserve or the Fleet Reserve option, the member found to be unfit must immediately submit a Fleet Marine Corps Reserve Application (chapter 9, MARCORSEPMAN) or a Fleet Reserve Application (NAVPERS 1830/1). Along with the application, member must forward a signed waiver of rights to a formal physical evalua-

tion board and disability retired pay in accordance with MARCORSEPMAN paragraph 10108.1 or MILPERSMAN 3855180.9, as appropriate, and request an effective date of not more than 30 days from date of application. Further, a message to Commander, Naval Military Personnel Command or Commandant of the Marine Corps, info to Director, Naval Council of Personnel Boards, Arlington, Virginia is to be sent reporting member's selection. A copy of the waiver is to be provided to the Naval Council of Personnel Boards for finalization of member's case.

d. At the request of the member, the Director, Naval Council of Personnel Boards is authorized to waive disability retirement/separation where consistent with the law and this manual.

0218 Requirement for Counseling

a. During disability evaluation processing, each member (or, in appropriate cases the guardian, spouse or next of kin) shall be counseled, in clearly understandable language, concerning the significance of actions being taken in his case, their probable effect on his future, and his rights with respect to options available to him. Counseling shall also be provided before, during and after physical evaluation board consideration, at each subsequent stage of processing, and as questions are raised by the member.

b. Counselors shall cover such matters as legal rights, effects of findings and recommendations, retired or severance pay, grade upon retirement, potential veteran's benefits, and recourse to and preparation of rebuttals, and shall assist the member in the preparation of rebuttals when appropriate.

c. Regularly assigned Disability Evaluation System Counselors are stationed at major naval regional medical centers to provide the required counseling for members at those activities. At those naval regional medical centers and naval hospitals where regularly assigned Disability Evaluation System Counselors are not available, the commanding officer shall designate a staff member, preferably the Patient Affairs Officer or one of his assistants, to provide disability counseling as a significant collateral duty. Disability Evaluation System Counselors and collateral duty counselors will, in addition, provide disability counseling as necessary for members of the naval

service in military treatment facilities controlled by other services (See BUMEDINST 6100.6).

d. A counsel, certified in accordance with Article 27(b), UCMJ, shall be designated by the government, at no expense to the member, to represent each member whose case is referred to a regional physical evaluation board. A member may obtain civilian counsel of his choice at his own expense or, after having been given the opportunity to consult with counsel, expressly waive representation by counsel in writing. When counsel other than designated military counsel has been obtained to represent the member, a designated military counsel shall act as associate counsel at the member's request. Military counsel, other than those regularly assigned to the Board, shall be provided upon request only if reasonably available in the local area of the Board and at no additional expense to the government.

0219 Conflict of Interest

a. No officer may appear as the member whose case is to be evaluated before a physical evaluation board which has been convened by him, or anyone temporarily succeeding to his office, or by anyone under him in the chain of authority.

b. No medical officer shall act as a medical member of a physical evaluation board if he has had direct charge of the case of the member concerned immediately preceding appearance before the board or if he was a member of a board of medical officers which reported on the member concerned.

0220 Disposition of Members Whose Names are Carried on the Temporary Disability Retired List

a. General. A member's name shall be removed from the Temporary Disability Retired List any time a report of physical examination indicates that maximum improvement has been achieved, or that the disability is currently ratable at less than 30% and the member has less than 20 years service even though not stabilized, or that the disability is of a permanent nature and not likely to undergo a significant change within the remaining statutory period. The maximum time that a member's name may be carried on the Temporary Disability Retired List in a pay status is five years. 10 U.S.C. 1210.

b. Periodic physical examination

(1) Members whose names are carried on the Temporary Disability Retired List shall submit to a physical examination at least every 18 months. The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall issue appropriate orders for such examination. Failure of a member to report for any periodic physical examination, unless a report of an acceptable current medical examination is furnished, may result in the termination of disability retired pay and may later be considered as showing an intent on the member's part to abandon benefits. If the member shows good cause for failure to report, the payments may be reinstated and may be made retroactive for a period of not over one year. 10 U.S.C. 1210.

(2) Members who have waived retired pay, in order to receive compensation from the Veterans Administration, are still members of the naval service, and are required to undergo periodic physical examination when ordered by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. Failure to report for physical examination as ordered may result in the suspension of retired pay. The retired pay account, once so suspended, will not automatically be reopened when the member later wishes to re-elect to receive retired pay because of decrease in, or termination of, his Veterans Administration compensation.

(3) Members who are ordered to submit to a periodic physical examination will be reimbursed for travel performed upon submission of a claim and presentation of their orders properly endorsed.

(4) The periodic physical examination shall be comprehensive and conducted with scrupulous care, reporting in full detail all physical impairments, and the physical findings associated with each impairment. Included will be any impairment from which the member has recovered and new ones acquired while on the Temporary Disability Retired List.

(5) Whenever in-patient observation is desirable or necessary for a proper evaluation, admission and retention as an in-patient for a period of ten days are authorized. This length of in-patient observation may be extended upon the authorization of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. It is particularly important that admission as an in-patient be effected for proper evaluation of neuropsychiatric cases.

c. Dispositions from the Temporary Disability Retired List

(1) Fit for duty. If the member has recovered from the disability to the degree that he is fit to perform duties, the following may apply:

(a) Regular components

1. An enlisted member of a regular component, subject to the member's consent, shall be reenlisted in his regular component provided he is otherwise qualified for reenlistment. An enlisted member of a regular component shall have both his status on the TDRL and disability retired pay terminated on the date of reenlistment in the regular component of which he was a member before being placed on the TDRL.

2. An officer of a regular component, subject to the officer's consent, shall be recalled to active duty and, as soon as practicable, be reappointed to the active list of his regular component, even if this means that there will be a temporary increase in the number of officers authorized for his grade. An officer in a regular component shall have disability retired pay terminated on the date of recall to active duty and his status on the TDRL terminated on the date of reappointment on the active list.

(b) Reserve components. A member of a reserve component, subject to his consent, shall be reappointed or reenlisted as the case may be, in the reserve component. A member of a reserve component, whether officer or enlisted, shall have his status on the TDRL and disability retired pay terminated on the date of reappointment or reenlistment in a reserve component, as the case may be.

(c) Fleet Reserve or Fleet Marine Corps Reserve members found fit. A member of the Fleet Reserve or Fleet Marine Corps Reserve on the TDRL who is found fit for duty shall, with his consent, resume his status in the Fleet Reserve or Fleet Marine Corps Reserve in the grade held when placed on the TDRL, or the next higher grade if considered qualified therefor.

(d) Reappointment or reenlistment. Any reappointment or reenlistment shall be in a rank, grade or rating not lower than the rank, grade or rating permanently held by the member at the time the member's name was placed on the TDRL, and may be in the rank, grade or rating immediately above the rank, grade or rating permanently held. For the purpose of being placed on a lineal list, promotion list, etc., the member will be given such seniority in rank, grade or rating, or will be

credited with such years of service as the Secretary of the Navy may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for the placement of his name on the TDRL.

(e) Disposition when member does not consent to reappointment or reenlistment. If a member does not consent to reappointment or reenlistment, his status on the TDRL and disability retired pay shall be terminated as soon as is practicable.

(2) Permanent retirement

(a) Members with 20 years or more of service computed under 10 U.S.C. 1208. If, as a result of a periodic examination or upon final determination, it is determined that the member's physical disability is of a permanent nature and if he has at least 20 years of service computed under 10 U.S.C. 1208, the member's name shall be removed from the Temporary Disability Retired List and he shall be retired under 10 U.S.C. 1201 or 1204, whichever applies, with retired pay computed under 10 U.S.C. 1401.

(b) Members with less than 20 years of service computed under 10 U.S.C. 1208. If, as a result of a periodic examination, or upon final determination, it is determined that the member's physical disability is of a permanent nature and is at least 30% under the Veterans Administration Schedule for Rating Disabilities in use at the time of the determination, the member's name shall be removed from the Temporary Disability Retired List and he shall be retired under 10 U.S.C. 1201 or 1204 whichever applies.

(3) Separation (severance pay). A member on the Temporary Disability Retired List who has less than 20 years of active service computed under 10 U.S.C. 1208 and a physical disability ratable at less than 30% disability under the Veterans Administration Schedule for Rating Disabilities in use by the Veterans Administration at the time of determination shall be removed from the Temporary Disability Retired List and may be separated under 10 U.S.C. 1203 or 1206 whichever applies (10 U.S.C. 1210(e)). This is without regard to the stability of the unfitting condition.

(4) Exceptions to (3) above

(a) Members having completed 20 years or more of active service under 10 U.S.C. 6330. A member on the Temporary Disability Retired List

who has less than 20 years service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C. chapter 61, shall be given the opportunity to request transfer to the Fleet Reserve or Fleet Marine Corps Reserve if the member is eligible for transfer under 10 U.S.C. 6330.

(b) Members of the Fleet Reserve or Fleet Marine Corps Reserve — reversion to former status. A member of the Fleet Reserve or Fleet Marine Corps Reserve on the Temporary Disability Retired List who has less than 20 years service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C. chapter 61 shall be given an opportunity to request that his name be removed from the Temporary Disability Retired List and that his status in the Fleet Reserve or Fleet Marine Corps Reserve be resumed.

(c) Reserve officer or enlisted member who has completed 20 years service under 10 U.S.C. 1332. A member on the Temporary Disability Retired List who has at least 20 years of service computed under 10 U.S.C. 1332 and who, as a result of a periodic physical examination, is determined to be entitled to severance pay under 10 U.S.C. chapter 61, shall be given an election, instead of being separated, to request transfer to the inactive status list under 10 U.S.C. 1209 and 1335.

(5) Failure to report for final periodic physical examination. Any member who fails to report for final periodic physical examination, or otherwise fails to arrange for an acceptable current medical examination, unless evidence shows just cause for failure to be examined, shall be administratively removed from the Temporary Disability Retired List on the fifth anniversary of placement on that list without entitlement to any benefits provided by 10 U.S.C. chapter 61, in accordance with DOD Directive 1332.18 of 9 September 1968 (enclosure (1) to SECNAVINST 1850.3B).

0221 Referral of Active Duty Members for Physical Disability Evaluation

As a general rule, an active duty member will be referred for disability evaluation only by a medical board that has considered the case and found the

member's fitness for continued active service questionable. In those cases where it is not practicable to have a medical board consider the case, e.g., hospitalization in a non-military hospital, the case may be referred by cognizant authority to the Central Physical Evaluation Board when available medical records show that the member's fitness for continued service is questionable.

0222 Referral of Inactive Duty Reservists for Physical Disability Evaluation

a. An inactive duty reservist who may be entitled to disability benefits because of a disability which occurred while serving on active duty or performing inactive duty training shall be referred for disability evaluation only if he has been issued a Notice of Eligibility for Disability Benefits due to an injury (or disease, in those members ordered to active duty for training for more than 30 days, other than active duty for training under 10 U.S.C. 270(b)) in accordance with SECNAVINST 1770.3.

b. An inactive duty reservist who has been determined by the Chief, Bureau of Medicine and Surgery to be not physically qualified for active duty or retention will be referred for physical disability evaluation only if he has demanded a full and fair hearing in accordance with 10 U.S.C. 1214.

0223 Failure to Appear for a Scheduled Formal Hearing; Forfeiture of Rights

An individual who, after due notification of the time and place of a formal hearing for the purpose of physical disability evaluation, without substantial reason fails to appear for the hearing, shall be deemed to have waived his right to personal appearance at such a hearing and the hearing shall be held in absentia.

0224 Reservist Participation in Disability Evaluation

a. Each board or council involved in disability evaluation, or review thereof, shall include at least one member who is a Navy or Marine reservist when that board or council is evaluating the fitness for active duty of a member of the Naval or Marine Corps Reserve (10 U.S.C. 266).

b. If, however, after referral of a mentally competent reservist's case to a regional physical evaluation board it is discovered that no member of the Central Physical Evaluation Board was a reservist, the case will be considered by a properly constituted regional physical evaluation board without return of the case to the Central Physical Evaluation Board for reconsideration. Regional physical evaluation board consideration, which is tantamount to a *de novo* proceeding, will meet the protective requirements of 10 U.S.C. 266 in such cases.

0225 Board Membership; Hearings in Revision, and *De Novo* Hearings

A board directed to convene for a hearing in revision shall, when practicable, consist of the same members who previously acted upon the case and shall proceed as instructed by the referring authority. A board conducting a *de novo* hearing (a new hearing) shall consist of different members than those who previously acted upon the case.

0226 Travel Expenses of Members Undergoing Evaluation

a. 10 U.S.C. 1210 provides that a member whose name is on the Temporary Disability Retired List is entitled to travel and transportation allowances authorized for active duty members for any travel required for a periodic physical examination. Such allowances are authorized by Joint Travel Regulations.

b. Personal appearance before a regional physical evaluation board by active duty and Temporary Disability Retired List members is official Navy business. Such travel shall be covered by directive type orders providing for all of the appropriate travel expenses authorized by Joint Travel Regulations.

c. Personal appearance before the Naval Physical Disability Review Board by active duty and Temporary Disability Retired List members is not in the public interest to a degree that will justify the expenditure of Government funds. Travel for such appearances shall be authorized by permissive orders at no expense to the Government.

0227 Disability Evaluation in Connection with Members Being Processed for Non-Disability Retirement or Separation

When a member continues to perform the normal duties of his office, rank, grade or rating until commencing processing for non-disability retirement or separation, it shall be presumed that he is fit for duty. This presumption can be overcome only if a member, in fact, was physically unable to adequately perform the duties of his office, rank, grade or rating even though he was improperly retained in that office, rank, grade or rating for a period of time; or if an acute, grave illness or injury, or other deterioration of physical condition occurring immediately prior to or coincidentally with non-disability retirement or separation processing rendered him unfit for further duty.

0228 Cases Involving Concurrent Disability and Disciplinary Action

a. When a medical board report has been prepared and the member is pending discharge proceedings by reason of misconduct or disciplinary proceedings which could result in a punitive discharge or dismissal, the report will be submitted to the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate, via the Chief, Bureau of Medicine and Surgery. The Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate, will take no action on the report pending completion of the administrative or disciplinary action. If as a result of the administrative or disciplinary action, the member is separated from the naval service, the medical board report will be returned to the Chief, Bureau of Medicine and Surgery for filing in the member's terminated health record. Nothing in this section shall preclude the Commandant of the Marine Corps or the Chief of Naval Personnel from recommending disability evaluation proceedings in an individual case which recommendation if concurred in by the Director, Naval Council of Personnel Boards shall result in the member's disability evaluation processing. If the Director, Naval Council of Personnel Boards does not concur, the case shall be forwarded to the

Secretary for decision.

b. When a member whose physical fitness for duty is being evaluated within the Disability Evaluation System is administratively declared a deserter, the Evaluation shall be terminated and the appropriate service personnel manager shall be notified of the termination. No further evaluation shall be undertaken until appropriate disciplinary or administrative action has been completed, the member has been reexamined physically, and a *de novo* medical board convened and reported to the Central Physical Evaluation Board.

0229 Access to the Secretary of the Navy

a. The Presidents of the Central Physical Evaluation Board and the Physical Review Council are authorized to refer to the Secretary of the Navy any board decision for concurrence and/or direction.

b. Individual members of the Central Physical Evaluation Board and the Physical Review Council are authorized to communicate directly to the Secretary in regard to substantial matters of equity or justice.

Appendix A

ABBREVIATIONS, DEFINITIONS AND EXPLANATION OF TERMS

1. ABBREVIATIONS

- a. NCPB — Naval Council of Personnel Boards
- b. DIRNCPB — Director, Naval Council of Personnel Boards
- c. DES — Naval Disability Evaluation System
- d. CPEB — Central Physical Evaluation Board
- e. PEB — Physical Evaluation Board
- f. RPEB — Regional Physical Evaluation Board
- g. PRC — Physical Review Council
- h. DESC — Disability Evaluation System Counselor
- i. NPDRB — Naval Physical Disability Review Board
- j. EPTE — Existed Prior to Entry (enlistment)
- k. DNEPTE — Did not exist prior to entry (enlistment)
- l. VASRD — Veterans Administration Schedule for Rating Disabilities
- m. TDRL — Temporary Disability Retired List
- n. MANMED — Manual of the Medical Department
- o. MILPERSMAN — Naval Military Personnel Manual
- p. MARCORSEPMAN — Marine Corps Separation and Retirement Manual
- q. UCMJ — Uniform Code of Military Justice
- r. ICD-9 — International Classification of Diseases, ninth revision

2. ACCEPTED MEDICAL PRINCIPLES

Those principles are fundamental deductions, consistent with medical facts, and based upon the observation of a large number of cases. To constitute accepted medical principles, they must be

so reasonable and logical as to create a virtual certainty that they are correct.

3. ACTIVE DUTY

Full-time duty in the active military service of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance while in the active military service at a school designated as a service school by law or by the Secretary of the Military Department concerned. (10 U.S.C. 101(22).)

4. ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS

Active duty under a call or order that does not specify a period of 30 days or less. (10 U.S.C. 101(23).)

5. ACTIVE SERVICE

Service on active duty. (10 U.S.C. 101(24).) For the purpose of determinations under 10 U.S.C. chapter 61, periods of active service shall be computed under 10 U.S.C. 1208.

6. AGGRAVATION BY SERVICE

a. Disease or injury which is noted prior to service or clearly had its inception prior to service is aggravated when such disability undergoes an increase in severity during the service, unless such increase in severity is clearly shown to have been due to the natural progression of the disease.

b. The usual effects of medical and surgical treatment in service, having the effect of amelio-

rating disease or other conditions incurred before entry into service, including post-operative scars and absent or poorly functioning parts or organs, do not constitute aggravation, unless the treatment was required to relieve disability which had been aggravated by service.

7. CONDITIONS OR DEFECTS NOT PHYSICAL DISABILITIES

Certain conditions and defects which are not considered to be ratable physical disabilities, but may be cause for administrative separation are to be found listed in BUMED Instruction 1910.2G, BUMED Instruction 1910.3B, MILPERSMAN 3420180 and 3850220, and MARCORSEPMAN 10405. These conditions include but are not limited to: alcoholism; allergy to uniform clothing; character disorders; enuresis; glucose-6-phosphate dehydrogenase deficiency; heat intolerance with disturbances of thermal regulation; homosexuality; inability to be fitted in uniform clothing; medical contraindication to administration of small pox, yellow fever or cholera immunization; motion/travel sickness; obesity; overheight; primary mental deficiency, pseudofolliculitis barbae of the face and/or neck; somnambulism; stuttering or stammering; systemic or marked allergic reactions following stings by red ants, bees, wasps or other stinging insects; unsanitary habits including repeated venereal disease infections.

8. DISABILITY BENEFITS

Disability retirement pay and severance pay, authorized by 10 U.S.C. chapter 61, provided for members, who, if otherwise qualified, become unfit to perform active duty because of physical disability acquired or aggravated while entitled to receive basic pay. Such benefits are not authorized for members or former members of the armed forces, after discharge or release from active duty or duties because of physical disability, even though the origin of the disability may be related to a period of active duty or inactive duty training.

9. DISABILITY EVALUATION SYSTEM COUNSELOR

Senior enlisted member (E-7 or above), or civilian employee at the hospital level, designated to perform the duties of counseling members who are

undergoing physical disability evaluation, providing them with authoritative and timely answers to their questions and aiding them in understanding their rights and entitlements.

10. DISABILITY RETIRED PAY

The regular periodic compensation a member receives who is retired because of disability resulting from active service.

11. DISABILITY SEVERANCE PAY

The one-time compensation a member receives who is discharged because of disability resulting from active service.

12. DISPOSITION

Action to be taken affecting an individual's membership status within the Naval Service. Following disability evaluation, instructions as to the disposition of individuals are issued to service personnel managers by elements of the Disability Evaluation System authorized to do so by the Secretary of the Navy. As used in this manual, the term "disposition" means one of the following:

- a. return to full duty;
- b. transfer to the permanent retired list;
- c. transfer to the Temporary Disability Retired List;
- d. discharge with severance pay;
- e. discharge without severance pay;
- f. retention on active duty in a limited duty capacity;
- g. continuation on the Temporary Disability Retired List;
- h. determination of fitness for duty and removal from the Temporary Disability Retired List;
- i. no action (under certain circumstances);
- j. physically qualified for active duty in the (Naval) (Marine Corps) Reserve; or
- k. not physically qualified for active duty in the (Naval) (Marine Corps) Reserve.

13. NOTIFICATION OF DECISION

A notification to a personnel manager of findings and directed dispositions of disability evaluation cases, issued by either the Central Physical Evaluation Board, the Physical Review Council,

or the Director, Naval Council of Personnel Boards.

14. GRADE

A step or degree in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation. (10 U.S.C. 101(18).)

15. GUARDIAN/COMMITTEE

A person or persons appointed by a court of competent jurisdiction to act for a mentally incompetent member under limitations, if any, established by the court. Their actions are legally binding on the member.

16. IMPAIRMENT OF FUNCTION

Any impairment which results in a lessening or weakening of the capacity of the body or any of its parts to perform in a manner which is considered by accepted medical principles to be normal.

17. IMPAIRMENT OF FUNCTION, LATENT

Impairment which is not manifested by current signs and/or symptoms, but which is of such a nature that there is reasonable certainty, according to accepted medical principles, that signs and/or symptoms will appear within a reasonable period of time.

18. IMPAIRMENT OF FUNCTION, MANIFEST

Impairment which is manifested by signs and/or symptoms.

19. INACTIVE DUTY TRAINING

a. "Inactive duty training means:

"(1) Duty prescribed for Reserves by the Secretary concerned under 37 U.S.C. 206 and any other provisions of law; or

"(2) Special additional duties authorized for Reserves by an authority delegated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to

which they are assigned.

"It includes those duties when performed by the Reserves in their status as members of the National Guard." (10 U.S.C. 101(31).)

b. Inactive duty training does not include work or study performed in connection with correspondence courses.

20. INCURRED WHILE ENTITLED TO RECEIVE BASIC PAY

a. "Incurred" refers to the date or time when a disease or injury is contracted or suffered, as distinguished from a later date, when it is determined that, because of such disease or injury, a member has become unfit to perform his duties. Physical disability due to natural progression of disease or injury is "incurred" at the time the disease or injury causing the disability is contracted. Increase in physical impairment during service in excess of that due to natural progression of the disease or injury is due to aggravation by service and, as such, is "incurred" when the disease or injury is aggravated.

b. "While entitled to receive basic pay" encompasses all types of duty which entitled the member concerned to receive active duty pay (as well as any duty without pay which may be counted the same as duty with pay). This definition shall not be construed to entitle any member not on active duty, who, at the time of separation from active duty, was considered physically fit for duty to benefits under 10 U.S.C. chapter 61, because of an increase in impairment occurring while the member is not entitled to basic pay.

21. INJURY

Damage or wound to the body, traumatic in origin.

22. LINE OF DUTY

a. General rule. Disease or injury incurred by naval personnel while in active service will be considered to have been incurred "in line of duty" except when incurred under one or more of the following circumstances:

(1) as the result of the member's misconduct or willful neglect;

(2) while avoiding duty by deserting the Service;

(3) during a period of unauthorized absence;

(4) while confined under sentence of a court-martial which included an unremitted dishonorable discharge; or

(5) while confined under sentence of a civil court following conviction for an offense which is defined as a felony by the law of the jurisdiction where convicted.

b. "Active service" as used in this paragraph includes full-time duty in the Naval Service, extended active duty, active duty for training, leave or liberty from any of the foregoing and inactive duty training.

23. MEMBER

Unless otherwise defined, a "member" includes a commissioned officer, commissioned warrant officer, warrant officer, aviation officer candidate or enlisted person of the regular or reserve forces, including a retired person of the Naval Service. The words "retired person" include members of the Fleet Reserve and Fleet Marine Corps Reserve who are in receipt of retainer pay. Midshipmen of the Navy are not members.

a. "Navy" means the United States Navy. It includes the Regular Navy, the Fleet Reserve and the Naval Reserve.

b. "Marine Corps" means the United States Marine Corps. It includes the Regular Marine Corps, the Fleet Marine Corps Reserve and the Marine Corps Reserve.

c. "Member of the Naval Service" means a person, male or female, appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps.

24. MEMBER, ENLISTED

A person serving in an enlisted grade. (10 U.S.C. 5001(a)(4).)

25. MENTAL INCOMPETENCY

The condition of a member who has been found by competent medical authority to be mentally incapable of managing his/her own financial affairs. Competent medical authority is generally considered to be represented by the report of a medical board constituted and convened in accordance

with 37 U.S.C. 602 as described in the Manual of the Medical Department 18-8(5).

26. MISCONDUCT

Generally misconduct is wrongful conduct. Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. To support a finding of misconduct, it must be established by clear and convincing evidence that the disease or injury was either intentionally incurred or was the proximate result of such gross negligence as to demonstrate a reckless disregard of the consequences. If a resulting disease or injury is such that it could have been reasonably foreseen from the course of conduct, it is said to be a "proximate result."

27. OFFICE

A position of duty, trust, or authority to which an individual is appointed.

28. OFFICER

"Officer" means a member of the Naval Service serving in a commissioned or warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade. (10 U.S.C. 5001(a)(5).)

29. OFFICER, COMMISSIONED

"Commissioned officer" means a member of the Naval Service serving in grade above warrant officer, W-1. It includes, unless otherwise specified, a member who holds a permanent enlisted grade or the permanent grade of warrant officer, W-1, and a temporary appointment in a grade above warrant officer, W-1. (10 U.S.C. 5001(a)(6).)

30. OFFICER, WARRANT

"Warrant officer" means a member of the Naval Service serving in a warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a warrant officer grade." (10 U.S.C. 5001(a)(7).)

**31. OPTIMUM HOSPITAL
IMPROVEMENT**

The point during hospitalization when the patient's medical fitness for further active service can be determined, and it is considered probable that further treatment for a reasonable period in a military hospital will not result in material change in the patient's condition which would alter his ultimate type of disposition or amount of separation benefits.

32. PERCENTAGE OF DISABILITY

The percentage ratings of the VASRD represent, as far as can practicably be determined, the average impairment in earning capacity resulting from diseases and injuries and their residual conditions in civil occupations as detailed in the Veterans Administration Schedule for Rating Disabilities.

33. PERMANENT DISABILITY

For the purposes of this manual a disability is of a permanent nature if, within five years of the initial determination under 10 U.S.C. 1201 or 1204 based upon accepted medical principles:

a. the member cannot reasonably be expected to recover so as to be physically fit to perform the duties of his office, grade, rank or rating; and

b. the disability rating, as established under the VASRD in use at the time of the initial determination that the member is unfit because of physical disability, cannot reasonably be expected to increase or decrease so as to change or terminate the amount of disability retired pay to which the member would be entitled.

All other disabilities are considered to be "may be" permanent.

34. PHYSICAL DISABILITY

Any impairment of function due to disease or injury, regardless of the degree, which reduces or precludes an individual's actual or presumed ability to engage in gainful or normal activity. The term "physical disability" includes mental disease but not such inherent defects as personality disorders, and primary mental deficiency, although they may render a member unsuitable for military duty.

35. PHYSICAL DISABILITY EVALUATION

Consideration within the Naval Disability Evaluation System of medical and other information with the objective of determining a member's physical fitness for active service. If an unfit determination is made the evaluation includes the assignment of percentage of compensable disability, if appropriate, and the disposition of the member.

**36. PHYSICAL DISABILITY, UNFIT
BECAUSE OF**

A member is "unfit because of physical disability" when he is unable, because of physical disability to perform the duties of his office, grade, rank or rating, in such a manner as to reasonably fulfill the purpose of his employment on active duty.

37. PRESUMPTION

A presumption (an inference of truth of any proposition or fact) is reached through a process of reasoning wherein one looks to probabilities rather than certainties. It is a rule of law which, when assumed, constitutes *prima facie* evidence as to the issue involved. In the absence of evidence to the contrary the presumption will be given its logical probative value. A preponderance of the evidence is required to overcome presumptions except when otherwise provided in this manual. For example, if after consideration of all available evidence a substantial doubt exists concerning the incurrence, aggravation, or extent of a member's condition, that doubt will be resolved in favor of the member. A preponderance of the evidence exists where there is a superiority in the weight of the evidence, not necessarily in quantity but in effect.

**38. PROXIMATE RESULT OF
ACTIVE DUTY**

Arising out of service or may reasonably be assumed to be the effect of service, will be considered the proximate result of the performance of active duty or inactive duty training, as the case may be.

39. RANK

"Rank" means the order of precedence among members of the armed forces. (10 U.S.C. 1019.)

40. RATING/RATE

"Rating" means the name (such as "boatswain's mate") prescribed for members of the Navy in an occupational field. "Rate" means the name (such as chief boatswain's mate) prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice). (10 U.S.C. 101(20).)

41. REASONABLE DOUBT

A reasonable doubt is one which exists when the evidence does not satisfactorily prove or disprove the issue. It is a substantial doubt (not specious) and within the range of probabilities as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or contradictions in the evidence.

42. RESERVE COMPONENT

Either the United States Naval Reserve or the United States Marine Corps Reserve.

43. SECRETARY

Unless otherwise qualified, refers to the Secretary of the Navy.

44. SPECIAL INTEREST CASES

As used in this manual "special interest cases" include:

- a. cases of active duty Navy flag officers and Marine Corps general officers who are found unfit and recommended for temporary or permanent retirement;
- b. cases of active duty medical officers found unfit and recommended for temporary or permanent retirement;
- c. cases which the Secretary or the Director, Naval Council of Personnel Boards designated for referral to the Secretary.

45. TEMPORARY DISABILITY RETIRED LIST

A pending list for members who are unfit because of physical disability and who meet the

other requirements of 10 U.S.C. chapter 61 for disability retirement, and whose disabilities are not determined to be permanent.

46. TRUSTEE

Section 602 of title 37 United States Code authorizes the Secretary of the Navy to appoint any person to receive active duty or retired pay of an incompetent member for the benefit of the member. This authority has been delegated to the Judge Advocate General.

A trustee appointed by the Judge Advocate General for the purpose of 37 U.S.C. 602 is a person who is authorized to receive and distribute the active duty or retired pay of a member of the Navy or Marine Corps, for the benefit of the member, who has been found mentally incapable of managing his financial affairs. This person has no other authority to act for the member.

47. UNAUTHORIZED ABSENCE

Any absence from duty without authority, such as contemplated under Articles 85 and 86 of the Uniform Code of Military Justice (10 U.S.C. chapter 47) or such as was contemplated by the provisions of the Articles for the Government of the Navy, which were in effect prior to 1951. When a disability is incurred at any time during a period of unauthorized absence, regardless of whether the absence interfered with the member's military duties, the member is excluded from receiving benefits under 10 U.S.C. chapter 61.

48. WILLFUL NEGLECT

As used in this manual, willful neglect on the part of an individual is defined as the intentional, unjustifiable, and inexcusable failure of the individual to perform some act or duty:

- a. required in the occupation in which the individual was engaged at time of incurring a physical impairment, or
- b. required of the individual as a legal obligation, or
- c. which could be reasonably evident to the individual as required to protect the individual from foreseeable injury or harm.

Appendix B

FEDERAL STATUTES AND EXECUTIVE ORDERS APPLICABLE TO DISABILITY EVALUATION

Following is a compilation of the most commonly applicable Statutes and Executive Orders relating to the Disability Evaluation System; each is quoted in whole or pertinent part on the succeeding pages of this Appendix.

<i>Title</i>	<i>Section</i>	<i>Subject</i>	
5	500	Administrative practice; general provisions.	B-3
5	8301	Uniform retirement date	B-3
10	266	Boards for appointment, promotion, and certain other purposes: composition	B-4
10	270	Ready Reserve: training requirements.	B-4
10	277	Regular and reserve components: discrimination prohibited.	B-4
10	680	Active duty agreements: release from duty.	B-4
10	1004	Physical examination	B-5
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10	1201	Regulars and members on active duty for more than 30 days: retirement . . .	B-6
10	1202	Regulars and members on active duty for more than 30 days: temporary disability retired list	B-6
10	1203	Regulars and members on active duty for more than 30 days: separation . . .	B-6
10	1204	Members on active duty for 30 days or less; disability from injury: retirement	B-7
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<i>Title</i>	<i>Section</i>	<i>Subject</i>	
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10	6331	Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay	B-15
10	6485	Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.	B-15
26	104	Compensation for injuries or sickness	B-16
37	601	Applicability	B-18
37	602	Payments: designation of person to receive amounts due	B-18
37	603	Regulations	B-18
37	604	Determination of Secretary final	B-18
38	722	Service disabled veterans' insurance.	B-19

TITLE 5

§ 500. Administrative practice; general provisions

(a) For the purpose of this section —

(1) "agency" has the meaning given it by section 551 of this title; and

(2) "State" means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(d) This section does not —

(1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;

(2) authorize or limit the discipline including disbarment, of individuals who appear in a representative capacity before an agency;

(3) authorize an individual who is

a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or

(4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.

(e) Subsections (b)–(d) of this section do not apply to practice before the Patent Office with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.

(f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representative in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient.

§ 8301. Uniform retirement date

(a) Except as otherwise specifically provided by this title or other statute, retirement authorized by statute is effective on the first day of the month following the month in which retirement would otherwise be effective.

(b) Notwithstanding subsection (a) of this section, the rate of active or retired pay or allowance is computed as of the date retirement would have occurred but for subsection (a) of this section.

TITLE 10

§ 266. Boards for appointment, promotion and certain other purposes: composition

(a) Except as provided in section 612(a)(3) of this title, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include an appropriate number of Reserves, as prescribed by the Secretary concerned under standards and policies prescribed by the Secretary of Defense.

(b) Each member of a board convened for the selection for promotion, or for the demotion or discharge, of Reserves must be senior in rank to the persons under consideration by that board. However, a member serving in a legal advisory capacity may be junior in rank to any person, other than a judge advocate or law specialist, being considered by that board; and a member serving in a medical advisory capacity may be junior in rank to any person, other than a medical officer, being considered by that board.

§ 270. Ready Reserve: training requirements

a. Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is inducted, enlisted, or appointed in an armed force after August 9, 1955, and who becomes a member of the Ready Reserve under any provision of law except section 269(b) of this title, shall be required, while in the Ready Reserve, to —

(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year;

(2) serve on active duty for training not more than 30 days during each year. However, no member who has served on active duty for one year or longer shall be required to perform a period of active duty for training if the first day of such period falls during the last one hundred and twenty days of his required membership in the Ready Reserve.

b. A member of the Ready Reserve covered by this section who fails in any year to satisfactorily perform the training duty prescribed in subsection (a), as determined by the Secretary concerned under regulations to be prescribed by the Secretary of Defense, may be ordered without his consent to perform additional active duty for training for not more than 45 days. If the failure occurs during the last year of his required membership in the Ready Reserve, his membership is extended until he performs that additional active duty for training, but not for more than six months.

c. Any person who becomes a member of the Army National Guard of the United States or the Air National Guard of the United States after October 4, 1961 and who fails in any year to perform satisfactorily the training duty prescribed by or under law for members of the Army National Guard or the Air National Guard, as the case may be, as determined by the Secretary concerned, may, upon the request of the Governor of the State or territory, Puerto Rico, or the Canal Zone, or the commanding general of the District of Columbia National Guard, whichever is concerned, be ordered, without his consent, to perform additional active duty for training for not more than forty-five days. A member ordered to active duty under this subsection shall be ordered to duty as a Reserve of the Army or as a Reserve of the Air Force, as the case may be.

§ 277. Regular and reserve components: discrimination prohibited

Laws applying to both Regular and Reserves shall be administered without discrimination —

- (1) among Regulars;
- (2) among Reserves; and
- (3) between Regulars and Reserves.

§ 680. Active duty agreements: release from duty

(a) Each agreement made under section 679(a) of this title shall provide that the

member may not be released from active duty without his consent during the period of the agreement —

(1) because of a reduction in the actual personnel strength of the armed force concerned, unless the release is in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary concerned to determine the members to be released from active duty under regulations prescribed by the Secretary; or

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is (A) dismissed or discharged under the sentence of a court-martial, (B) released because of an unexplained absence without leave for at least three months, (C) released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or (D) released because he has been considered at least twice and has not been recommended for promotion to the next higher grade or because he is considered as having failed of selection for promotion to the next higher grade and has not been recommended for promotion to that grade, under conditions that would require the release or separation of a Reserve Officer who is not serving under such agreement.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 679(a) of this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month's basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is —

(1) released for a reason described in subsection (a)(2)(A)–(C);

(2) released because of a physical disability resulting from his intentional misconduct or willful neglect;

(3) eligible for retired pay or severance pay under another provision of law;

(4) placed on a temporary disability retired list; or

(5) released to accept an appointment, or to be enlisted, in a regular component of an armed force.

§ 1004. Physical examination

(a) Each member of the Ready Reserve who is not on active duty shall —

(1) be examined as to his physical fitness every four years, or more often as the Secretary concerned considers necessary; and

(2) execute and submit annually a certificate of physical condition.

Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually a certificate of physical condition.

(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.

(c) Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned.

§ 1163. Reserve components: members; limitations on separation

(a) An officer of a reserve component who has at least three years of service as a commissioned officer may not be separated from that component without his consent except under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned, or by the approved sentence of a court-martial. This subsection does not apply to a separation under subsection (b) of this section or under section 1003 of this title, to a dismissal

under section 1161(a) of this title, or to a transfer under section 3352 or 8352 of this title.

(b) The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve (1) who has been absent without authority for at least three months, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(c) A member of a reserve component who is separated therefrom for cause, except under subsection (b), is entitled to a discharge under honorable conditions unless —

(1) he is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) he consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

(d) Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system, may not be involuntarily released from that duty before he becomes eligible for that pay, unless his release is approved by the Secretary.

§ 1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that —

(1) based upon accepted medical principles, the disability is of a permanent nature;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either —

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination; and either —

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

§ 1203. Regulars and members on active duty for more than 30 days: separation

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any

other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that —

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either —

(A) the disability is less than 30 percent under the standard schedule for rating disabilities in use by the Veterans' Administration at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title; or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978; and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title. However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

§ 1204. Members on active duty for 30 days or less; disability from injury: retirement

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability resulting from an injury, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that —

(1) based upon accepted medical principles, the disability is of a permanent nature;

(2) the disability is the proximate result of performing active duty or inactive-duty training;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either —

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination.

§ 1205. Members on active duty for 30 days or less; disability from injury: temporary disability retired list

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

§ 1206. Members on active duty for 30 days or less; disability from injury: separation

Upon a determination by the Secretary concerned that a member of the armed forces not

covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability resulting from an injury, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that —

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and was the proximate result of performing active duty or inactive duty training.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

§ 1207. Disability from intentional misconduct or willful neglect: separation

Each member of the armed forces who incurs a physical disability that, in the determination of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter.

§ 1208. Computation of service

(a) For the purpose of this chapter, a member of a regular component shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation or mandatory elimination from the active list.

(2) The sum of —

(A) his active service as a member of the armed forces, a nurse, a reserve nurse after February 2, 1901, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the National Oceanographic and Atmospheric Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of clause (2)(B) of this subsection, active service as a member of the National Oceanographic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purpose of this chapter, with the number of years of service that he would count if he were computing his years of service under section 1333 of this title.

§ 1209. Transfer to inactive status list instead of separation

Any member of the armed forces who has at least 20 years of service computed under section 1332 of this title, and who would be qualified for retirement under this chapter but for the fact that his disability is less than 30 percent under the standard schedule for rating disabilities in use by the Veterans' Administration at the time of the determination, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 1335 of this title and, if otherwise eligible, to receive retired pay under chapter 71 of this title upon becoming 60 years of age.

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status

(a) A physical examination shall be given at least once every 18 months to each mem-

ber of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is less than

30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the Secretary shall treat him as provided in section 1211 of this title.

(g) Any member of the armed forces whose name is on the temporary disability retired list, and who is required to travel to submit to a physical examination under subsection (a), is entitled to the travel and transportation allowances authorized for members in his retired grade traveling in connection with temporary duty while on active duty.

(h) If his name is not sooner removed, the disability retired pay of a member whose name is on the temporary disability retired list terminates upon the expiration of five years after the date when his name was placed on that list.

§ 1211. Members on temporary disability retired list: return to active duty; promotion

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210(f) of this title, shall —

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active duty list in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in the regular grade held by him when his name was placed on the temporary disability

retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was placed on the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, or the Air Force, who has no regular to reserve grade, be reappointed or reenlisted in the Army, or the Air Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210(f) of this title, shall —

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W-1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W-2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the temporary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component, be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master sergeant, in the next higher grade in that reserve component.

(c) If a member is reappointed, reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his reappointment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable.

(d) Disability retired pay of a member covered by this section terminates —

(1) on the date when he is recalled to active duty under subsection (a)(1) or (2) or subsection (b)(1) or (2), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine

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Corps Reserve under subsection (b)(4), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a member of the armed forces for promotion, each member who has been reappointed or reenlisted, under subsection (a) or (b), shall, when his name is placed on a lineal list, a promotion list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list.

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) his years of service, but not more than 12, computed under section 1208 of this title, by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his

name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of Transportation, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Veterans' Administration. However, no deduction may be made from any death compensation to which his dependents become entitled after his death.

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of

an armed force, the National Oceanographic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

**§ 1215. Members other than Regulars:
applicability of laws**

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d) of this section, the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of —

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and pay-

ment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Administrator of Veterans' Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is in pay grade 0-7 or higher or is a Medical Corps officer or medical officer of the Air Force being processed for retirement under any provisions of this title by reason of age or length of service —

(1) retire such member under section 1201 of this title;

(2) place such a member on the temporary disability retired list pursuant to section 1202 of this title, or

(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health Affairs.

§ 1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to

This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy.

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he —

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Veterans' Administration, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a Veterans' Administration facility for necessary hospital care.

§ 1219. Statement of origin of disease or injury: limitations

A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid.

§ 1221. Effective date of retirement or placement of name on temporary disability retired list

Notwithstanding section 8301 of title 5, the Secretary concerned may specify an effective date for the retirement of any member of the armed forces under this chapter, or for the placement of his name on the temporary disability retired list, that is earlier than the date provided for in that section.

§ 1372. Grade on retirement for physical disability: members of armed forces

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been pro-

moted had it not been for the physical disability for which he is retired and which was found to exist as a result of his physical examination for promotion.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of his physical examination for promotion.

§ 1373. Higher grade for later physical disability: retired officers recalled to active duty

Unless entitled to a higher retired grade under some other provision of law, a member of an armed force whose retired pay is computed under section 1402(d) of this title is entitled, upon his release from active duty, to the grade equivalent to the grade or rank upon which his retired pay is based under that section.

§ 1554. Review of retirement or separation without pay for physical disability

(a) The Secretary concerned shall from time to time establish boards of review, each consisting of five commissioned officers, two of whom shall be selected from officers of the Army Medical Corps, officers of the Navy Medical Corps, Air Force officers designated as medical officers, or officers of the Public Health Service, as the case may be, to review, upon the request of an officer retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in his case. A request for review must be made within 15 years after the date of the retirement or separation.

(b) A board established under this section has the same powers as the board whose findings and decision are being reviewed. The findings of the board shall be sent to the Secretary concerned, who shall submit them to the President for approval.

(c) A review by a board established under this section shall be based upon the records of the armed forces concerned and such other evidence as may be presented to the board. A witness

may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Administrator of Veterans' Affairs under chapter 59 of title 38.

§ 2679. Representatives of veterans' organizations: use of space and equipment

(a) Upon certification to the Secretary concerned by the Administrator of Veterans' Affairs, the Secretary shall allow accredited, paid, full-time representatives of the organizations named in section 3402 of title 38, or of other organizations recognized by the Administrator, to function on military installations under the jurisdiction of that Secretary that are on land and from which persons are discharged or released from active duty.

(b) The commanding officer of each of those military installations shall allow the representatives described in subsection (a) to use available space and equipment at that installation.

(c) The regulations prescribed to carry out this section that are in effect on January 1, 1958, remain in effect until changed by joint action of the Secretary concerned and the Administrator.

(d) This section does not authorize the violation of measures of military security.

§ 6148. Disability and death benefits: Naval Reserve and Marine Corps Reserve

(a) A Member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty, or to perform inactive-duty training, for any period of time, and is disabled in line of duty from injury while so employed, or the beneficiary of such a member who dies from such an injury, is entitled to the same pension, compensation, death gratuity, and hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service. For the purpose of this subsection, a member who

is not in a pay status shall be treated as though he were receiving the pay and allowances to which he would be entitled if serving on active duty.

(b) A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty, other than active duty for training under section 270(b) of this title, for a period of more than 30 days, and is disabled in line of duty from disease while so employed, or the beneficiary of such a member who dies from such a disease, is entitled to the same pension, compensation, death gratuity, and hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service.

(c) Subsections (a) and (b) do not authorize the hospitalization of dependents of members of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve.

(d) A member of the Naval Reserve or the Marine Corps Reserve who, in time of peace, becomes ill or contracts disease in line of duty while he is on active duty or performing inactive-duty training is entitled to receive at Government expense medical, hospital, and other treatment appropriate for that illness or disease. The treatment shall be continued until the disability resulting from the illness or disease cannot be materially improved by further treatment. Such a member is also entitled to necessary transportation and subsistence incident to treatment and return to his home upon discharge from treatment. The treatment may not extend beyond ten weeks after the member is released from active duty, except —

(1) upon an approved recommendation of a board of medical survey consisting of one or more officers in the Medical Corps; or

(2) upon authorization of the Surgeon General, based on the certificate of a reputable physician that the illness or disease is a continuation of the illness or disease for which the member was initially treated and that benefit will result from further treatment.

(e) If a person is entitled to benefits under subsection (a) or (b) and under —

(1) section 6327 of this title; or

(2) section 331 of title 38;

he must elect the provision that is to be applied to him.

§ 6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay

(a) When he has completed 30 years of service, or when he is found not physically qualified in an examination under section 6485 of this title, a member of the Fleet Reserve or the Fleet Marine Corps Reserve shall be transferred —

(1) to the retired list of the Regular Navy or the Regular Marine Corps, as appropriate, if he was a member of the Regular Navy or the Regular Marine Corps at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve; or

(2) to the appropriate Retired Reserve, if he was a member of the Naval Reserve or the Marine Corps Reserve at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) For the purpose of subsection (a), a member's years of service are computed by adding —

(1) the years of service credited to him upon his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve;

(2) his years of active and inactive service in the armed forces before his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve not credited to him upon that transfer; and

(3) his years of service, active and inactive, in the Fleet Reserve or the Fleet Marine Corps Reserve.

(c) Unless otherwise entitled to higher pay, each member transferred to the retired list or the Retired Reserve under this section is entitled to retired pay at the same rate as the retainer pay to which he was entitled at the time of his transfer for the retired list or the Retired Reserve.

§ 6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall

(a) A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent —

(1) in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;

(2) in time of national emergency declared by the President; or

(3) when otherwise authorized by law.

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period.

TITLE 26

§ 104. Compensation for injuries or sickness

(a) In general. Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include —

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness;

(3) amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081); and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States.

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee.

(b) Termination of Application of Subsection (a)(4) in certain cases.

(1) In general. Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2).

(2) Individuals to whom subsection (a)(4) continues to apply. An individual is described in this paragraph if —

(A) on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4),

(B) on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

(C) he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

(D) on application therefor, he would be entitled to receive disability compensation from the Veterans' Administration.

(3) Special rules for combat-related injuries. For purposes of this subsection, the term "combat-related injury" means personal injury or sickness —

(A) which is incurred —

(i) as a direct result of armed conflict.

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

(4) Amount excluded to be not less than veterans' disability compensation. In the case of any individual described in paragraph (2), the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such

individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

(c) Cross references —

(1) For exclusion from employee's

gross income of employer contributions to accident and health plans, see section 106.

(2) For exclusion of part from the application of subsection (a)(4) of this section, see section 1430 of title 10, United States Code (relating to career compensation laws).

TITLE 37

§ 601. Applicability

This chapter applies to —

(1) members of a uniformed service who are on active duty (other than for training) or who are on a retired list of that service; and

(2) members of the Fleet Reserve or Fleet Marine Corps Reserve.

§ 602. Payments: designation of person to receive amounts due

(a) Active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, that are otherwise payable to a member to whom this chapter applies and who, in the opinion of a board of medical officers or physicians, is mentally incapable of managing his affairs, may be paid for that member's use or benefit to any person designated by the Secretary concerned, or by any officer to whom he delegates his authority under this section, without the appointment in judicial proceedings of a committee, guardian, or other legal representative.

(b) The board shall consist of at least three qualified medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders, appointed from available medical officers or physicians under his jurisdiction by the head of whichever of the following is providing medical treatment for the member, or by a person designated by that head —

- (1) Department of the Army;
- (2) Department of the Navy;
- (3) Department of the Air Force;
- (4) Department of Health and Human Services; or
- (5) Veterans' Administration.

If the hospitalization or medical care of the member is not provided by the United States, the board shall be appointed by the Secretary of the department having jurisdiction of the member.

(c) A payment made to a person who is designated under this section discharges the obligation of the United States as to the amount paid.

(d) A person serving in a legal, medical, fiduciary, or other capacity, may not demand or accept a fee, commission, or other charge for any service performed under this chapter.

(e) This section does not apply in any case in which a legal committee, guardian, or other representative has been appointed by a court of competent jurisdiction, except as to payments made before the paying agency of the department concerned receives notice of that appointment.

(f) A person who is designated to receive payments under this section shall furnish satisfactory assurance that the amounts received by him will be applied to the use and benefit of the incompetent member, and, where the payments may reasonably be expected to be more than \$1,000, shall provide a suitable bond to be paid for out of amounts due the incompetent member.

§ 603. Regulations

The Secretary concerned and the Administrator of Veterans' Affairs shall prescribe regulations necessary to carry out this chapter.

§ 604. Determination of Secretary final

The determination as to the person authorized to receive a payment under section 602 of this title is final and is not subject to review by an official of the United States or a court.

TITLE 38

§ 722. Service disabled veterans' insurance

(a) Any person who is released from active military, naval, or air service, under other than dishonorable conditions on or after April 25, 1951, and is found by the Administrator to be suffering from a disability or disabilities for which compensation would be payable if 10 per centum or more in degree and except for which such person would be insurable according to the standards of good health established by the Administrator, shall, upon application in writing made within one year from the date service-connection of such disability is determined by the Veterans' Administration and payment of premiums as provided in this subchapter, be granted insurance by the United States against the death of such person occurring while such insurance is in force. If such a person is shown by evidence satisfactory to the Administrator to have been mentally incompetent during any part of the one-year period, application for insurance under this section may be filed within one year after a guardian is appointed or within one year after the removal of such disability as determined by the Administrator, whichever is the earlier date. If the guardian was appointed or the removal of the disability occurred before January 1, 1959, application for insurance under this section may be made within one year after that date. Insurance granted under this section shall be issued upon the same terms and conditions as are contained in the standard policies of National Service Life Insurance except (1) the premium rates for such insurance shall be based on the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of $2\frac{1}{4}$ per centum per annum; (2) all cash, loan, paid-up, and extended values shall be based upon the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of $2\frac{1}{4}$ per centum per annum; (3) all settlements on policies involving annuities shall be calculated on the basis of The Annuity Table for 1949, and interest at the rate of $2\frac{1}{4}$ per centum per annum; (4) insurance granted under this section shall be on a nonparticipating basis and all premiums and other collections therefor shall be credited directly to a revolving fund in the Treasury of the United States, and any payments on such insurance shall be made directly

from such fund. Appropriations to such fund are hereby authorized. As to insurance issued under this section, waiver of premiums pursuant to section 602(n) of the National Service Life Insurance Act of 1940 and section 712 of this title shall not be denied on the ground that the service-connected disability became total before the effective date of such insurance.

(b) (1) Any person who, on or after April 25, 1951, was otherwise qualified for insurance under the provisions of section 620 of the National Service Life Insurance Act of 1940, or under subsection (a) of this section, but who did not apply for such insurance and who is shown by evidence satisfactory to the Administrator (A) to have been mentally incompetent from a service-connected disability, (i) at the time of release from active service, or (ii) during any part of the one-year period from the date the service connection of a disability is first determined by the Veterans' Administration, or (iii) after release from active service but is not rated service-connected disabled by the Veterans' Administration until after death; and (B) to have remained continuously so mentally incompetent until date of death; and (C) to have died before the appointment of a guardian, or within one year after the appointment of a guardian; shall be deemed to have applied for and to have been granted such insurance, as of the date of death, in an amount which, together with any other United States Government or National Service life insurance in force, shall aggregate \$10,000. The date to be used for determining whether such person was insurable according to the standards of good health established by the Administrator, except for the service-connected disability, shall be the date of release from active service or the date the person became mentally incompetent, whichever is the later.

(2) Payments of insurance granted under subsection (b)(1) of this section shall be made only to the following beneficiaries and in the order named —

(A) to the widow or widower of the insured, if living and while unmarried;

(B) if no widow or widower entitled thereto, to the child or children of the insured, if living, in equal shares;

(C) if no widow or widower or child entitled thereto, to the parent or parents of the insured who last bore that relationship, if living, in equal shares.

(3) No application for insurance payments under this subsection shall be valid unless filed in the Veterans' Administration within two years after the date of death of the insured or before January 1, 1961, whichever is the later, and the relationship of the applicant shall be proved as of the date of death of the insured by evidence satisfactory to the Administrator. Persons shown by evidence satisfactory to the Administrator to have been mentally or legally incompetent at the time the right to apply for death benefits expires, may make such application at any time within one year after the removal of such disability.

(4) Notwithstanding the provisions of section 717 of this title, insurance under this subsection shall be payable at the election of the first beneficiary in 240 equal monthly installments or under the options specified in section 717(b)(3) or (4) of this title. Any installments certain of

insurance remaining unpaid at the death of any beneficiary shall be paid in equal monthly installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the classes specified in subsection (b)(2) of this section and in the order named.

(5) The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (b)(2) of this section. No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and if no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made.

Appendix C

COUNSELING TO BE PROVIDED TO MEMBERS UNDERGOING PHYSICAL DISABILITY EVALUATION

1. COUNSELING PROVIDED WITHIN THE NAVAL SERVICE

In accordance with the policy expressed in paragraph 0218 of this manual, disability evaluation counseling by members of the Naval Service shall normally be provided:

(1) by regularly assigned Disability Evaluation System Counselors (DESC) stationed at major naval regional medical centers;

(2) where regularly assigned counselors are not present, by staff members of medical centers and hospitals performing such counseling as a significant collateral duty assignment;

(3) by legal counsel certified in accordance with Article 27(b), UCMJ, designated by the government to represent each member whose case is referred to a regional physical evaluation board, or to the Naval Physical Disability Review Board for a personal hearing. When counsel other than this designated counsel has been arranged by the member, the designated counsel shall act as associate counsel if so requested by the member;

(4) by individual military counsel of a member's choice, provided that the military counsel so selected is located in the local area and his service is available at no expense to the government.

2. CIVILIAN COUNSEL

A member undergoing physical disability evaluation may arrange for civilian counsel at no expense to the government.

3. REQUIREMENT FOR COUNSELING WITHIN THE NAVAL SERVICE

Each member, or his guardian, spouse, or next-of-kin, will be counseled throughout the course of disability evaluation processing. The purpose of counseling is to enable the member fully to understand the significance of the findings made by the medical board, the Central Physical Evaluation Board, a regional physical evaluation board, the Physical Review Council and the Director, Naval Council of Personnel Boards as appropriate; together with his rights with respect to options available to him.

4. STAGES OF COUNSELING

In particular, counseling will be provided at the following stages of disability evaluation processing:

a. when the findings and recommendations of the medical board are made known to the member or his legal representative. At this point counseling is the responsibility of the commanding officer of the medical treatment facility which conducts the medical board on the member. This responsibility will normally be performed through the permanently assigned Disability Evaluation System Counselor, or through the individual designated by the commanding officer to provide counseling in accordance with this manual. It is incumbent upon the counselor to thoroughly read the medical board report to ascertain if there is any information which cannot be released to the member before counseling is initiated.

b. when the findings of the Central Physical Evaluation Board are made known to the member or his legal representative. Counseling at this juncture continues to be the responsibility of the commanding officers of Navy medical treatment facilities which conducted the medical boards. Counseling of members of the Naval Service in a medical treatment facility of another service will be the responsibility of the commanding officer of the cognizant service facility as prescribed in BUMEDINST 6100.6A.

c. when the member's case is to be considered at a formal hearing by a regional physical evaluation board. The counsel for the member, located at the formal board, shall assume the counseling responsibility for all activity connected with that board.

d. when the findings of the Physical Review Council are made known to the member or his legal representative. After a formal hearing, when the member has returned to the hospital where the medical board originated, or to the administrative command holding the member's service record, the counseling responsibility shall be again assumed by the DESC in that geographic area, except counseling which relates to the formal regional physical evaluation board proceedings shall be under the supervision of the counsel for the member. In any event, counseling will be based on the circumstances of the case and designed to serve the member's best interests.

5. SCOPE OF COUNSELING

The scope of counseling may vary with the circumstances of the member's case; however, it includes, as a minimum, each of the matters listed below, to the extent that they are raised by the findings and recommendations:

a. Statutory rights. The member will be advised that:

(1) No member of the Naval Service may be separated or retired for physical disability without a full and fair hearing, if he demands it. (Note Since the finding of fit for duty by the Central Physical Evaluation Board does not result in separation or retirement, the member found fit for duty does not have a statutory right to a full and fair hearing.) (See 0213)

(2) If a reservist, the member has the right to at least one reserve voting member on the PEB

and the PRC considering his case. But see paragraph 0224.

(3) He may not be discharged or released from the Naval Service by reason of disability until he has executed or refused to execute a claim for compensation, pension, or hospitalization to be filed with the Veterans Administration.

(4) He cannot be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury he has, and that any such statement against his interests, signed by him, is invalid.

b. Findings. Each of the several findings made by the appropriate board or PRC must be explained in meaningful, understandable language to the member, together with the effect the findings will have on his status.

c. Functions of designated legal counsel. When a member has been ordered to a full and fair hearing, his designated counsel shall:

(1) confer with and fully advise the member of the legal and other substantive considerations in his case;

(2) represent the member before the regional physical evaluation board, presenting to the Board information and arguments in support of the member's case and interests;

(3) arrange for the presence at the hearing of desired witnesses and evidence in support of the member's case;

(4) interview witnesses prior to the hearing and question them during the hearing;

(5) counsel the member regarding the recommended findings of the regional physical evaluation board and the courses of action open to the member. The counsel shall recommend courses of action that are most favorable to the member and consistent with the letter and intent of statutes, regulations and directives addressing physical disability evaluation and administration;

(6) prepare or assist in the preparation of rebuttals against board findings at the request of the member;

(7) if the Physical Review Council makes substitute findings, counsel the member regarding those findings and recommend the course of action most favorable to the member consistent with the letter and intent of statutes, regulations and directives addressing physical disability evaluation and administration.

d. Pay. Based on the available data, the counselor shall estimate the amount of retired pay or

severance pay the member may expect to receive, when findings are issued and show how pay is computed under the several formulae that may apply. Income tax exemptions that may apply under current tax laws and rulings of the Internal Revenue Service and also estimated withholding tax should be explained. The Tax Reform Act of 1976 modified existing tax laws to exclude tax exemptions for members who entered the Armed Forces on or after 25 September 1975, except for those who incur a combat related injury. Those affected members should be advised to contact a representative of the Internal Revenue Service for a determination of entitlement to any tax benefits. The fact that a deduction will be made from his retired pay due to automatic enrollment in the Survivor Benefit Plan with maximum coverage (unless he elects a lesser coverage or declines participation under the Plan before becoming entitled to retired pay) should be made known to the member. If temporary retirement is directed, it shall be emphasized that the subsequent changes that may occur in the disability will not result in an increase or decrease in the amount of member's retired pay, so long as the member is retained on the Temporary Disability Retired List, but may be reflected in the computation of the percentage of disability awarded when the member is removed from the Temporary Disability Retired List.

CAUTION — NAVY PERSONNEL ONLY:

Highest grade/service for pay determination for prior active service in another branch of the Armed Forces is verified after SECNAV findings are released. As final pay/grade determinations will be made at the time, care should have been exercised when counseling members in this regard.

e. Grade determination. The member must be told that the grade in which he will be retired will be based upon the provisions of applicable law, and that determination of highest grade satisfactorily held will be made by the Secretary of the Navy.

f. Deduction of severance pay from Veterans Administration compensation. It should be made clear to the member that any disability severance pay he may receive will be deducted from any compensation for the same disability to which he may become entitled from the Veterans Administration, and it is thus important for a member who receives disability severance pay promptly to file a claim with the Veterans Administration so that

this amortization by the Veterans Administration of disability severance pay will commence as soon as possible. Otherwise, if he defers filing a claim with the Veterans Administration, at some future date when his need for compensation from the Veterans Administration may be great, its receipt will be delayed while his disability severance pay is recouped.

g. Veterans Administration counseling and benefits

(1) Whenever possible, arrangements should be made for a member being retired or separated, because of physical disability, to have a personal interview with the Veterans Administration representative serving his hospital or installation concerning his entitlement to Veterans Administration benefits. If, for any reason, this is not feasible, the member shall be counseled as indicated in the following paragraph.

(2) The member will be advised of his right to apply to the Veterans Administration for disability benefits before separation, or subsequent thereto, or not at all, as he elects. Notwithstanding an election to the contrary, he should be urged to file a claim before separation whether or not he finally decides to avail himself of the Veterans Administration benefits. All members should be especially urged to initiate a claim with the Veterans Administration, because the Veterans Administration benefits may be substantially greater, depending on the member's grade, severity of the disability, and his dependency status. The member will be shown how disability compensation paid by the Veterans Administration relates to retired or severance pay. Other potential benefits, such as National Service Life Insurance, survivors' benefits, medical care and hospitalization, will be pointed out. It will be emphasized in all cases that the Veterans Administration makes its own determination with respect to entitlements and administration of rights and benefits arising under laws it administers and the Veterans Administration is not bound by determinations made by the Naval Service.

h. Temporary Disability Retired List (TDRL). If it has been determined that the member's name be placed on the TDRL, he will be advised of the effect of such a disposition. He (or his legal representative) will be counseled that he must undergo periodic reexamination when so directed by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, or his retired

pay may be suspended. He will be advised that he must notify the Chief of Naval Personnel (NMPC-231), or the Commandant of the Marine Corps (Code MMSR-4), as appropriate, of any change in residence. The member must be informed that the maximum time he is entitled to retirement pay as a result of his TDRL status is five years and that final disposition may be made at an earlier date, whenever a report of periodic reexamination discloses that his condition has sufficiently stabilized or his percentage of disability decreases below 30%, or he is determined to be fit for duty. He will be informed that changes in the degree of severity of his disability will not affect his retired pay while he is on the TDRL, but that his final disposition based on the degree of impairment at that time, may result in permanent retirement, with the same, a greater, or lesser percentage of disability; separation with or without severance pay; or an opportunity to reenter the Naval Service.

i. Furnishing pamphlet. The DESC shall ensure that each member counseled has been furnished a copy of the pamphlet, "Disability Separation" (NAVEDTRA 46601B/NAVMC 2675) (Rev. 1979).

j. Review by PRC. Each member will be informed of the review procedures that take place at the PRC. He will be told that the PRC is authorized to make changes or modify RPEB recommended findings. The member shall be advised of the rights and elections available to him in such event.

k. Relief from final action. Each member will be informed of his limited right to appeal the final decision in his case. He will be told that the Director, Naval Council of Personnel Boards is authorized to change or modify the Disability Evaluation System findings if he grants the appeal.

l. Legal advice. Each member or his legal representative will be informed of his right to seek

legal advice from an officer designated by a Naval Legal Services Office (or other activity). To this end, the DESC will assist him in making arrangements for such consultations. It is not the function of the DESC or of hospital/center staff counselors to give legal advice to a member or his legal representative. For this purpose the Naval Legal Services Office in the proximate geographical area or a nearby naval activity therein which renders legal assistance, shall make available at least one officer who is certified in accordance with Article 27(b), Uniform Code of Military Justice, to provide legal advice to members and their legal representatives referred by the DESC or otherwise asking for such advice.

6. COUNSELING REQUIRED BY OTHER DIRECTIVES

The counseling required by the preceding paragraph applies to disability evaluation cases and does not replace further separation counseling required by other directives.

7. COUNSELING OF MEMBERS ON THE TEMPORARY DISABILITY RETIRED LIST

Although the wide geographic dispersal of members on the Temporary Disability Retired List makes counseling less readily accessible, the same counseling services provided to members on active duty shall be provided, upon request, to members on the TDRL. A member on the TDRL may request counseling from a DESC, from the individual designated as a disability counselor by the commanding officer of a hospital not having a DESC assigned, or from his designated legal counsel, as appropriate, by mail, by telephone or in person.

Appendix D

GUIDANCE REGARDING CENTRAL AND REGIONAL PHYSICAL EVALUATION BOARD FINDINGS

1. PHYSICAL EVALUATION BOARDS AND THE PHYSICAL REVIEW COUNCIL SHALL MAKE A SPECIFIC FINDING IN EACH CASE PROPERLY REFERRED TO THEM FOR DISABILITY EVALUATION, STATING WHETHER A MEMBER IS FIT OR UNFIT FOR ACTIVE DUTY. IN THE EVENT A MEMBER IS EVALUATED TO BE UNFIT, ADDITIONAL FINDINGS ARE REQUIRED. THE DIFFERENT FINDINGS ARE SET FORTH IN THE SUCCEEDING PARAGRAPHS.

2. MEMBERS CALLED TO ACTIVE DUTY FOR MORE THAN THIRTY (30) DAYS

a. Finding One: Fit/Unfit

(1) If it is considered that the member concerned is physically fit to perform the duties of his office, grade, rank, or rating, the following finding *only* shall be recorded: "The member is fit for duty."

(2) If it is considered that the member concerned is unfit to perform the duties of his office, grade, rank or rating because of physical disability, the following finding shall be recorded:

"(Name of member) is found unfit to perform the duties of his office, grade, rank, or rating because of physical disability," namely:

List diagnoses and the ICD-9 number of each disability contributing to the member's unfitness. Diagnoses rendering the member unfit shall be listed first and marked by asterisks. The remaining diagnoses shall be listed in order of importance and degree of impairment caused.

b. Discussion

(1) To become eligible for disability benefits under 10 U.S.C. chapter 61, a member must be determined to be unfit to perform the duties of his office, grade, rank or rating because of physical disability. Therefore, this is the first determination that must be made. A member is considered unfit because of physical disability when unable, because of disease or injury, to perform in such a manner as to reasonably fulfill the purpose of his employment on active duty the duties of the office, grade, rank or rating to which the member normally can be expected to be assigned. A member who is not physically qualified to perform full and unrestricted duty is unfit because of physical disability. A member may be unfit because of a single impairment or from the combined effect of two or more impairments, even though not one of them alone would cause unfitness.

(2) Although a member may have impairments which are ratable in accordance with the Veterans Administration Schedule for Rating Disabilities, such impairments do not necessarily render the member unfit for active service. In each case considered, it is necessary to correlate the nature and degree of functional impairment with the requirements of the duties to which the member may reasonably expect to be assigned by virtue of his office, grade, rank or rating (excluding special hazardous duty, such as duty involving flying, etc., but giving due consideration to the requirements of other potential sea, field, or combat assignments).

(3) A member who has an impairment of function which renders him unable to perform the duties which he would normally be assigned by virtue of office, grade, rank or rating, will be con-

sidered to be unfit for duty, even though physically capable of performing his designated duties at the moment. Conversely, a member convalescing from an illness or an injury, and who is likely to recover to a degree which would permit the performance of all duties in the near future, will be considered to be fit for duty.

(4) In each case the overall effect of all defects present must be considered, both from the standpoint of the effect on the member's performance and requirements which may be imposed on the Naval Service to maintain and protect the member during future duty assignments. The determination of physical disability is *not* based on such factors as a member's inability to meet the physical standards for enlistment or appointment; or pending voluntary needs of the service for special skills possessed by the member; or that the member is not physically qualified for specialized duties, such as duty involving flying or duty aboard a submarine; or that the member is not physically qualified for transfer to another component or category within the Naval Service. Mere inability to pass a physical fitness (exercise) test will not be considered unfitting. DoD Directive 1332.18 (enclosure (1) to SECNAVINST 1850.3B) sets forth medical conditions and physical defects which normally render a member physically unfit for active duty.

(5) In evaluating the fitness of a member the evaluation board must request and consider all relevant evidence. For example, when a referral for physical evaluation immediately follows acute, grave illness or injury, the medical evaluation may have the greater weight, particularly if medical evidence establishes that continued service would be deleterious to the member's health. However, when a member is referred for physical evaluation under other circumstances, evaluations or performance of duty by supervisors (letters, fitness reports or personal testimony) may provide better evidence than a clinical estimate by a medical officer of the member's physical ability to perform the duties of his office, grade, rank or rating. Thus, if the evidence establishes that the member adequately performed the normal duties of his office, grade, rank or rating until the time of referral for physical evaluation, the member might be considered fit for duty, even though medical evidence indicates his physical ability to perform such duties may be questionable. On the other hand, regardless of the presence of physical

deficiencies, inadequate performance, per se, could not be considered as evidence of physical unfitness for the member's office, grade, rank or rating unless it appears that there is a cause-effect relationship between the two factors.

(6) When a member scheduled for separation for other purposes is referred to the Disability Evaluation System, the presumption of fitness may be overcome if the evidence established that:

(a) The member, in fact, was physically unable to adequately perform the duties of his office, grade, rank or rating for a period of time.

(b) Acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability, rendered the member unfit for duty.

(7) When the member's referral for physical evaluation is related to physical examinations given as part of non-disability separation or retirement processing, evidence must be clear and convincing to overcome the presumption of fitness. In other cases the presumption of fitness may be overcome by a preponderance of the evidence.

c. Finding Two: Incurred/Aggravated

(1) Finding Two shall be phrased to conform to the appropriate sample following:

"The disability (was)(was not) incurred while entitled to receive basic pay"; or
"The disability (was)(was not) aggravated while entitled to receive basic pay."

(2) Discussion

(a) Service incurred. For members called to active duty for more than thirty days, it shall be determined whether each ratable condition was incurred while entitled to receive basic pay. "While entitled to receive basic pay" encompasses all types of duty which entitled the member concerned to receive active duty pay and any duty without pay which may be counted the same as duty with pay. In the absence of clear evidence to the contrary, a member is presumed to have been in sound mental and physical condition upon entering active service, except as to physical disabilities noted and recorded at the time of entrance. Any disease or injury discovered after a member enters active service is presumed to have been incurred while entitled to receive basic pay. Determinations concerning the inception of disease or injury, not noted at the time of entry,

should not be based on medical judgment alone, as distinguished from accepted medical principles, or on history alone, without regard to clinical factors pertinent to the basic character, origin, and development of such disease or injury. This determination should be based on a thorough analysis of the entire evidentiary showing in the individual case and careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of such disease or injury.

(b) Service aggravated. When, by clear evidence, it is determined that a condition existed before entry on active military service, the PEB must further consider whether the condition was aggravated by military service. Any additional disability resulting from the pre-existing physical condition will be presumed to have been caused by service aggravation and only specific findings of "natural progression" of the pre-existing disease or injury based on accepted medical principles, as distinguished from medical opinion alone, are sufficient to overcome the presumption of service aggravation.

d. Finding Three: Misconduct or willful neglect/unauthorized absence

(1) Finding Three shall be phrased to conform to the appropriate sample following:

"The disability (is)(is not) due to intentional misconduct or willful neglect and (was)(was not) incurred during a period of unauthorized absence."

(2) Discussion. Findings shall be made as to whether or not the disability is the result of the member's intentional misconduct or willful neglect, and whether or not the disability was incurred during a period of unauthorized absence. The law presumes that any disease or injury was incurred in line of duty, unless there is clear and convincing evidence of intentional misconduct or willful neglect, or that it was incurred during a period of unauthorized absence. Any substantial doubt will be resolved in favor of the member. The Manual of the Judge Advocate General (JAGINST 5800.7B), chapter VIII, prescribes the manner in which the line of duty determinations are made. Evidence received in line of duty determinations made in accordance with chapter VIII of the Manual of the Judge Advocate General (JAGINST 5800.7B) is material evidence to be considered. The record of proceedings in all cases, other than disabilities incurred as a result of

enemy action, shall contain documentation which explains the circumstances surrounding the incurrence of the disability. The documentation may be either the report of a fact-finding body (formal or informal); NAVJAG 5800/15 (Injury Report); OPNAV Form 5102/1 (Accidental Injury/Death Report); NAVMC 10767 (Accident and Injury Report (5100)); OPNAV Form 5102/3 (Investigation Report of Motor Vehicle Accident); depositions; statements; or testimony elicited at a formal hearing. When a disability is incurred at any time during a period of unauthorized absence, regardless of whether the absence interfered with the member's military duties, the member is excluded from receiving benefits under 10 U.S.C. chapter 61.

(3) The Director, Naval Council of Personnel Boards, is assigned the responsibility and authority to initiate administrative procedures to obtain timely reports, when required, of investigations pertaining to injuries where disability is a consideration. In each case presented with a disability in which a line of duty determination is required (Manual of the Judge Advocate General (JAGINST 5800.7B), section 0805), the Central Physical Evaluation Board shall take timely action to secure a copy of the investigative report if not present with the submitted documents. This will include a speedletter request to the command assigned responsibility for the investigation, with a copy to the command in the chain of command exercising general court-martial authority. If no reply to the speedletter is received within 15 days, a message will be sent to the command exercising general court-martial authority requesting their assistance in securing the investigative report.

e. Finding Four: Proximate result/line of duty

(1) Finding Four shall be phrased to conform to the appropriate sample following:

(a) The disability (is)(is not) the proximate result of active duty (or inactive duty training), or

(b) The disability (was)(was not) incurred in line of duty in time of war or National emergency, or

(c) The member has at least eight years of active service, or

(d) The disability (was)(was not) incurred after 14 September 1978.

(2) Discussion. Unless the member has eight or more years active service, it must be determined whether each diagnosis listed, which constitutes

the member's disability, was the proximate result of the performance of active duty, or that such disability was incurred in the line of duty, in time of war or National emergency or after 14 September 1978. Disease or injury incurred by naval personnel on active duty for more than thirty days, while serving on active duty, is considered to have been incurred in line of duty unless one of the exceptions listed in Appendix A, paragraph 22 applies. A finding regarding proximate result must be made in injury cases when the member is on active duty orders for thirty days or less, on training duty under 10 U.S.C. 270(b) (see paragraph 3 of this Appendix), or on inactive duty training orders.

f. Finding Five: Permanency of disability

(1) Finding Five shall be phrased to conform to the appropriate sample following:

"The disability (is)(may be) permanent."
(See paragraph 0209 and items 33 and 45 of Appendix A of this manual.)

(2) Discussion. It shall be determined whether the total disability "is permanent" or "may be permanent" and such finding shall be recorded. A disability will be considered as "may be permanent" when, based on medical experience in like cases, it is considered that:

(a) The member may become fit to perform the duties of his office, grade, rank or rating within five years from retirement or separation, or

(b) The compensable percentage rating may, if less than eighty percent, change within said five years, or

(c) The compensable percentage rating, if eighty percent or more, may reduce below eighty percent during said five years.

g. Finding Six: Percentage ratings

(1) Finding Six shall be phrased to conform to the appropriate sample following:

"That such disability is ratable at () percent under the Schedule for Rating Disabilities in current use by the Veterans Administration as follows: (tabulate method for determining percentage)."

(2) Discussion. The law provides for the use of the Veterans Administration Schedule for Rating Disabilities (VASRD) in determining the percentage of disability of a member who is found to be unfit because of physical disability and is otherwise eligible for disability benefits. The VASRD does not prescribe standards under which fitness

for military duty may be determined. A member may have a disability which is ratable in the VASRD, but which is not considered to be sufficient to render him unfit for duty. Therefore, the VASRD is not to be used until the member has been found unfit to perform his duties. The board members and reviewers must be familiar with the entire contents of the VASRD, including the general policies, introductory paragraphs to sections, and italicized footnotes. Failure to adhere to criteria of the Schedule, except as provided in DoD Directive 1332.18 (enclosure (1) to SECNAVINST 1850.3B), will result in error and consequent delay in disability processing. Some of the rules more commonly used in applying the Schedule are as follows:

(a) Degree of severity. The basis of disability evaluation, and of the assessment of degrees of severity of disabilities, is the ability of the individual as a whole, to function under the circumstances of ordinary activity; that is, in daily life under normal environment. In this connection, it must be remembered that an individual may be too ill, weak, or otherwise disabled, to engage in work, although he may be up and about and fairly comfortable at home or upon limited activity.

(b) Disabilities not listed. In view of the number of atypical instances, it is not expected that every disability evaluated will show all of the symptoms and signs described in the various Veterans Administration ratings. Since the codes merely mention the most common ones, signs and symptoms of closely related disabilities will be considered by analogy. Findings sufficiently characteristic to identify the disability and its degree of severity and, above all, coordination of the rating with the impairment of function must be made in all instances.

(c) Reasonable doubt. When, after careful consideration of all evidence, a reasonable doubt arises regarding the degree of severity of a disability, such doubt shall be resolved in favor of the member. (See DoDD 1332.18, enclosure 3, Section I.3)

(d) Ratings of disabilities aggravated by active service. In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, whether the particular condition was noted at the time of entrance into the active service or is

determined upon the evidence of record to have existed at that time. It is necessary, therefore, in all cases of this character to deduct from the present degree of disability, the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule, except that if the disability is total (100 percent), the EPTE factor will be recorded, and no deduction in compensable rating will be made. The resulting difference will be recorded on the rating sheet. If the degree of disability at the time of entrance into the service is not ascertainable in terms of the Schedule, no deduction will be made.

(e) Pyramiding. Evaluation and rating of the same disability under more than one diagnosis (pyramiding) shall be avoided.

(f) Zero percent rating. Occasionally, a disability is of such mild degree that it does not meet the criteria even for the lowest rating provided in the VASRD under the applicable diagnostic code number. A zero percent rating may be applied in such cases although the lowest listed rating is ten percent or more. However, in instances in which the VASRD specifies a "minimum rating," a rating no lower than the prescribed minimum shall be assigned.

(g) Minimum ratings

1. In some instances the VA Schedule provides a "minimum rating," without qualification as to residuals or impairment. Multiple sclerosis, Code 8018, is an example. If the member is unfit for duty, diagnosis alone is sufficient to justify the minimum rating. Higher ratings may be awarded in consonance with degree of severity, but no rating lower than the "minimum" may be used if the diagnosis is satisfactorily established.

2. The VA Schedule provides for minimum rating for "residuals" in certain medical conditions. The instructions may be "rate residuals, minimum ____," or may specify what impairment to rate and give a minimum rating for that impairment. Examples are code 8011, anterior poliomyelitis, and 6015 benign new growth of eyeball and adnexa, other than superficial. To justify the minimum rating for residuals, a functional impairment or other residual caused by the condition must exist. Otherwise a zero percent is appropriate.

(h) Amputation Rule. The combined permanent rating for disabilities of an extremity shall not exceed the rating for the amputation level next higher than the site of the injury. A disability

of an extremity shall not be given a higher rating than would be given if the limb were amputated at the most distal of the customary amputation sites which would include the affected area (region) in the part removed.

(i) Interpolation of VA ratings. Although rating scales in the VASRD have been carefully constructed and tested to reflect proper ratings for varying degrees of severity of a disability based on the nature of the disease and the progression of its manifestations, in many instances ratings cannot be graduated in precise increments of 10, but will range from 20 percent to 40 and 80, or from 30 percent to 60 and 80. Interpolation of these ratings shall not be attempted by adjudicative bodies in the Naval Disability Evaluation System.

(j) Combined compensable rating. If the member is found to be physically unfit and eligible for disability benefits, the percentages of all compensable disabilities are combined in the manner prescribed in paragraph 25 of the VASRD.

1. Combined compensable ratings will be converted to the nearest number divisible by 10 and combined ratings ending in 5 will be adjusted upward.

2. Bilateral factor. When a partial disability results from disease or injury, of both arms, or both legs, or paired skeletal muscles, or there is a bilateral involvement of peripheral nerves, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (not combined) before proceeding with further combinations or converting to the combined compensable rating. For example, if ratings for disabilities in paired extremities are combined to equal 59 percent, 5.9 percent (10 percent bilateral factor) will be added to the 59 percent to total 64.9 percent which is then converted to 65 percent and, in accordance with the same rule, is converted to 70 percent. This is proper even though the combined rating was less than 65 percent and underwent two upward conversions. ($64.9 = 65 = 70$.)

(k) VA Codes. Prescribed VA Codes in accordance with the VASRD will be assigned to each diagnosis listed on NAVSO 6100/16 (Appendix H). In selecting appropriate codes, consider the following:

1. Description of functional impairment in medical records must be checked against

the VASRD name of the disease or injury and its modifying terms.

2. Related diagnoses should be merged for rating purposes when the VASRD provides a single code covering all their manifestations. This prevents pyramiding and reduces chance of overrating.

3. MEMBERS CALLED TO ACTIVE DUTY FOR 30 DAYS OR LESS (OR TRAINING DUTY UNDER 10 U.S.C. 270(b))

Findings as prescribed in paragraph 2 shall be made, except that Finding Two thereunder should be as follows:

"That such disability (is)(is not) the result of an injury."

(NOTE: If not the result of an injury, no additional recommended findings are required. If the result of an injury, then the subsequent recommended findings shall relate only to disability resulting from the injury and a recommended finding whether the disability is the proximate result of performing such duty shall be made under finding e(1)(a) of paragraph 2.)

4. FINDINGS, INACTIVE DUTY TRAINING

The same phraseology in its recommended findings as prescribed in paragraph 3 shall be used, except the words "inactive duty training" shall be substituted for the words "active duty" in Finding e(1)(a).

(NOTE: If not the result of an injury, no additional recommended findings are required. If the result of an injury, then the subsequent recommended findings shall relate only to disability resulting from the injury and a finding whether the disability is the proximate result of inactive duty training shall be made under finding e(1)(a) of paragraph 2.)

5. CASES ARISING UNDER 10 U.S.C. 1004

a. In cases arising under 10 U.S.C. 1004 the following findings shall be recorded:

"(Name of member) is found (physically qualified) (not physically qualified) for active duty in

the (U.S. Naval Reserve) (U.S. Marine Corps Reserve)."

b. If it is found that the member is not physically qualified, the disqualifying defect or disability, and the diagnostic nomenclature number (ICD-9 number) therefore shall be set forth, and an opinion given as follows:

"The disability (is)(is not) due to intentional misconduct or willful neglect."

c. In determining the member's physical qualifications for active duty, the impairment of function suffered will be correlated with the requirements of the duties to which he may reasonably expect to be assigned if recalled to active duty in his current rank or rate.

6. FINDINGS, CASES ARISING UNDER 10 U.S.C. 6331

In cases arising under 10 U.S.C. 6331 only the following findings shall be recorded:

"(Name of member) is found (physically qualified) (not physically qualified) for active duty in the (Fleet Reserve)(Fleet Marine Corps Reserve)."

If the member is found not physically qualified, the disqualifying defect or disability and the diagnostic nomenclature number (ICD-9 number) therefor shall be set forth.

7. REEVALUATION OF MEMBERS ON THE TEMPORARY DISABILITY RETIRED LIST

a. In cases of members of the Naval Service on the Temporary Disability Retired List, findings shall be recorded as prescribed in paragraphs 2 or 3 of the Appendix, as appropriate. For disability for which the member was temporarily retired, findings are not necessary under subparagraphs c, d and e of paragraph 2. When the Commandant of the Marine Corps/Chief of Naval Personnel has recommended that a member's name be administratively removed from the TDRL the only finding to be made, on the basis of available records, is that the member (is)(is not) physically fit for active duty.

b. EPTE factors

(1) In those cases in which, at the time of temporary retirement, the Secretary has not assigned an EPTE factor, ratability of the entire disability for which retired is conclusively determined and cannot be abrogated, in whole or in

part, except upon showing mistake of law or fraud or misrepresentation existing at the time of retirement. (See paragraph 0214 for definition of mistake of law.) No EPTE factor may be assigned upon reevaluation. Conversely, when an EPTE factor has been assigned upon initial placement on the TDRL, the factor may not be altered or eliminated upon reevaluation, absent the exceptions previously mentioned.

(2) In those cases in which at the time of TDRL placement an EPTE factor has been assigned, the disability upon reevaluation normally

is ratable. If the percentage of disability upon reevaluation is equal to, or less than, the EPTA factor percentage, the disability upon reevaluation is ratable at zero percent.

8. MISCELLANEOUS CASES

Boards considering cases not covered in the preceding paragraphs shall make findings only with respect to issues designated by competent authority.

**ATTACHMENT (1)
TO
APPENDIX D**

FINDINGS TO BE MADE IN SPECIFIC INSTANCES

FINDINGS TO BE MADE IN SPECIFIC INSTANCES

SECNAVINST 1850.4A
30 March 1982

FINDINGS TO BE MADE IN SPECIFIC INSTANCES	ORDERED TO ACDU MORE THAN 30 DAYS ²			ORDERED TO ACDU LESS THAN 31 DAYS ³				INACTIVE DUTY TRAINING ¹				10 USC 1004 ⁴			10 USC 6331 ⁵			TDRL ⁶	
	Fit	Unsuit	Unfit	Fit	Unsuit	Unfit No Injury	Unfit Injury	Fit	Unsuit	Unfit No Injury	Unfit Injury	Physically Qualified	Unsuit	Not Physically Qualified	Fit	Unsuit	Unfit	Fit	Unfit
THE MEMBER IS FIT FOR DUTY	X			X				X										X	
IT IS RECOMMENDED THAT (NAME OF MEMBER) BE FOUND PHYSICALLY QUALIFIED FOR ACTIVE DUTY IN THE (U.S. NAVAL RESERVE) (U.S. MARINE CORPS RESERVE)												X							
IT IS RECOMMENDED THAT (NAME OF MEMBER) BE FOUND PHYSICALLY QUALIFIED FOR ACTIVE DUTY IN THE (FLEET RESERVE) (FLEET MARINE CORPS RESERVE)															X				
MEMBER UNSUITABLE—REFER CASE TO CNMPC OR CMC AS APPROPRIATE VIA CHBUMED—CONDITION NOT A PHYSICAL DISABILITY—SEE ITEM 7 APPENDIX A		X			X				X				X			X			
THE MEMBER IS UNFIT BECAUSE OF PHYSICAL DISABILITY			X			X	X			X	X								X
IT IS RECOMMENDED THAT (NAME OF MEMBER) BE FOUND NOT PHYSICALLY QUALIFIED FOR ACTIVE DUTY IN THE (U.S. NAVAL RESERVE) (U.S. MARINE CORPS RESERVE)														X					
IT IS RECOMMENDED THAT (NAME OF MEMBER) BE FOUND NOT PHYSICALLY QUALIFIED FOR ACTIVE DUTY IN THE (FLEET RESERVE) (FLEET MARINE CORPS RESERVE)																	X		
DIAGNOSES (ICD-9 CODES REQUIRED)			X			X	X			X	X			X			X		X
THE DISABILITY WAS (NOT) (INCURRED) (AGGRAVATED) WHILE ENTITLED TO RECEIVE BASIC PAY			X																
SUCH DISABILITY IS (NOT) THE RESULT OF AN INJURY ¹						X	X			X	X								
THE DISABILITY IS (NOT) DUE TO INTENTIONAL MISCONDUCT OR WILLFUL NEGLECT			X				X				X			X					
THE DISABILITY WAS (NOT) INCURRED DURING A PERIOD OF UNAUTHORIZED ABSENCE			X				X				X								
THE DISABILITY IS (NOT) THE PROXIMATE RESULT OF ACTIVE DUTY			X				X												
THE DISABILITY IS (NOT) THE RESULT OF INACTIVE DUTY TRAINING											X								
THE DISABILITY WAS INCURRED IN LINE OF DUTY IN TIME OF WAR OR NATIONAL EMERGENCY			X				X				X								
THE MEMBER HAS AT LEAST EIGHT YEARS OF ACTIVE SERVICE			X				X				X								
THE DISABILITY (IS) (MAY BE) PERMANENT			X				X				X								X
THE DISABILITY IS RATABLE AS SET FORTH ABOVE AT () PERCENTAGE			X				X				X								X

¹ Findings relate only to the injury in question.

² Does not include those ordered to involuntary active duty for 45 days under 10 USC 270 (b).

³ Does include those ordered to involuntary active duty of 45 days under 10 USC 270 (b).

⁴ 10 USC 1004—Physical Examination (Reservists) and inactive duty Reservists not issued notice of eligibility.

⁵ 10 USC 6331—Members of the Fleet Reserve and Fleet Marine Corps Reserve: Transfer to the Retired List; retired pay.

⁶ Relates only to those conditions for which placed on the Temporary Disability Retired List.

30 March 1982

Appendix E

PROCEDURAL GUIDE FOR FORMAL HEARINGS

PRESIDENT: This board will come to order.

COUNSEL FOR THE BOARD: This board is convened by the Director, Naval Council of Personnel Boards, appointing order serial _____ dated _____ (as amended)

(For Active Duty and TDRL Members)

The case of _____ has been properly
name of member, grade and service
referred to this board for a determination of his/her physical fitness for continued naval service and, if found unfit, a determination of entitlement to benefits authorized by title 10 United States Code, chapter 61.

(For Inactive Duty Reservists)
(who are not currently entitled to basic pay)

The case of _____ has been properly
name of member, grade and service
referred to this board for a determination of his/her physical qualification for active duty in the Naval Reserve.

The following members named in the appointing order are present: (Counsel for the Board will identify each board member present by rank and name).

All persons required to be sworn have been duly sworn. _____
name, rank and service
is Counsel for the Board. (Required oaths are in Attachment (1) to this Appendix.)

PRESIDENT: Will the member state his name, rank, service, service number, organization and current address.

MEMBER: _____, _____, _____
name of member rank service
service number organization current address

PRESIDENT: _____, the procedures governing the
name of member
operation of this Board are contained in the Disability Evaluation Manual. One of your entitlements under that Manual is to representation by counsel. This may be by designated military counsel, civilian counsel provided by you at your own expense, or by military counsel of your own choice if he is

reasonably available in the local area and at no expense to the Government. Have you selected counsel other than the designated military counsel?

MEMBER: No (Yes).

PRESIDENT: By whom will the member be represented?

COUNSEL FOR THE MEMBER: The member will be represented by _____
name

PRESIDENT: Since you are represented by counsel of your choice, _____
name of designated counsel
will act as associate counsel, if you desire. Do you so desire?

MEMBER: Yes (No).

(Designated Counsel)

I am the designated counsel, and I possess the requisite qualifications to represent the member and to appear before this board.

(Individual Counsel)

I am (a member of the bar of _____) (a counsel certified by
_____. (_____).
name of organization

PRESIDENT: Will counsel for the board proceed.

COUNSEL FOR THE BOARD: Is any member of this board aware of any reason which would render him unable to accord the member a fair and impartial hearing?

BOARD MEMBERS: Yes (No).

PRESIDENT: Let the Record show that _____ (all) (members responded in
the negative, (and) _____ (responded affirmatively).

Note: If any member of the board responds affirmatively, the board will be adjourned and an alternate member called and the hearing resumed.

COUNSEL FOR THE BOARD: _____, YOU MAY CHALLENGE ANY
name of member
member of the board for cause by disclosing the grounds for such challenge. Do you desire to challenge any member of the Board:

MEMBER: Yes (No).

PRESIDENT: (If no challenge) The board is assembled.

Note: If there is a challenge, the board will proceed in accordance with paragraph 0805c(11).

COUNSEL FOR THE BOARD: Have your rights been explained to you and do you waive a reading of these rights?

MEMBER: Yes (No).

Note: If member answers in the negative, the President advises him of his rights as follows:

PRESIDENT: _____, I will now advise you of your rights
name of member
and I ask your close attention.

You may testify as a witness under oath in your own behalf, in which case you may be examined as any other witness.

You may introduce witnesses, depositions, documents, sworn statements, or other evidence in your own behalf and cross-examine all other witnesses who testify in this hearing.

You may make an unsworn statement, personally or through counsel, or both, either oral or written.

You may make an oral argument or file a written argument, personally or through counsel, or both, or

You may remain silent.

You may not be required to make any statement touching on the circumstances surrounding the origin or aggravation of any disease or injury that you may have, and your failure to make such statement or to answer such question is not to be construed as an implied admission of any fact, nor will such silence be detrimental to your case. However, if you testify as a witness concerning the incurrence of your disability, you may be examined on same by the board members and questioned by counsel for the board.

Do you have any questions as to your rights?

MEMBER: No.

PRESIDENT: Do you understand your rights?

MEMBER: Yes.

COUNSEL FOR THE BOARD: I offer into evidence the papers pertaining to this case as exhibit A. The member and counsel for the member have had the opportunity to examine these papers.

PRESIDENT: Subject to objection by any member of the board, counsel, or the member, these documents are received in evidence.

Note: Should there be objection to the administration of evidence, the President must ensure that the record of proceedings reflects the nature of the objection.

COUNSEL FOR THE BOARD: Will the member or any witness be making a sworn statement?

COUNSEL FOR THE MEMBER: Yes (No).

Note: If the member or a witness is to be sworn, counsel for the board will administer the oath prescribed in the Attachment to this Appendix. Thereafter, Counsel for the Board may be excused, subject to recall by the President.

PRESIDENT: (If witnesses are present) Unless they are required to be present for other reasons, all persons expecting to be called as witnesses in this case will withdraw from the board room.

PRESIDENT: Counsel for the member may proceed.

COUNSEL FOR THE MEMBER: _____ appears before the
name of member
board seeking to be found _____.

Note: Counsel for the member will call witnesses and present other evidence in support of the member's position. He will question the member, as appropriate. Questions and answer are recorded exactly as spoken. Physical events which occur, and witnesses' identifications and illustrations given by motions, by gestures, or by reference to persons or other physical objects within the board's view will be described as accurately as possible by the reporter, with assistance of others present as necessary. Board members may ask questions at any time during the presentation, but normally wait until conclusion by counsel for the member.

COUNSEL FOR THE MEMBER: I have nothing further to present.

PRESIDENT: _____ is there any other information you
name of member
would like to bring to the board's attention?

MEMBER: Yes (No).

Note: The board may inquire into any additional relevant matter

PRESIDENT: The board will close for deliberations.

Note: After deliberations are concluded, the board will reconvene to announce its findings:

PRESIDENT: The board will come to order. Let the record show that the member and counsel for the member are present. The board in its deliberations has made the following recommended findings:

Note: The President then announces the recommended findings of the board.

PRESIDENT: The board is adjourned.

**ATTACHMENT (1)
TO APPENDIX E**

OATHS

OATHS

NOTE: Those being sworn shall rise (unless physically unable to do so) and raise their right hand. The phrase "so help you God" shall be omitted on affirmations. Oaths need not be given to board personnel if they have been previously sworn and the record so reflects.

OATH FOR BOARD MEMBERS

COUNSEL FOR THE BOARD: You _____ do swear (or affirm)
name of members

that you will faithfully perform all the duties incumbent upon you as a member of this board; that you will fully inquire into and examine the case now before you and all subsequent cases without partiality; and that you will render (recommended) findings based on the evidence pertinent to each case; so help you God.

EACH BOARD MEMBER: I do.

OATH FOR DESIGNATED COUNSEL

PRESIDENT: You _____ do swear (or affirm) that you
name of counsel

will faithfully perform the duties of counsel for this board and as counsel for members appearing before this board; so help you God.

COUNSEL: I do.

OATH FOR REPORTERS

COUNSEL FOR THE BOARD: You _____ do swear (or affirm)
name of reporter

that you will faithfully perform the duties of reporter for this board; so help you God.

REPORT: I do.

OATH FOR WITNESSES

COUNSEL FOR THE BOARD: You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth; so help you God.

WITNESS: I do.

Appendix F

INSTRUCTIONS PERTAINING TO THE RECORD OF PROCEEDINGS OF THE HEARINGS OF REGIONAL PHYSICAL EVALUATION BOARDS

1. RECORD OF BOARD PROCEEDINGS

- a. The entire hearing shall be recorded verbatim.
- b. Unless otherwise authorized by Director, Naval Council of Personnel Boards, a verbatim transcript of proceedings shall be prepared for each formal hearing. Pen and ink corrections are acceptable provided they are not excessive in number and do not detract from the reading continuity of the document. Pages shall be numbered consecutively.
- c. In the event that the case load of a board becomes excessive, Director, Naval Council of Personnel Boards may authorize the use of a summary record of proceedings consisting of:
 - (1) with exception of medical data which shall not be summarized, a summary format similar to Attachment (1) at the end of this Appendix;
 - (2) cassette tape recordings of the proceedings.

2. FORMAT OF THE RECORD OF PROCEEDINGS

- a. The proceedings and recommended findings shall be recorded on and attached to NAVSO 6100/16 (Appendix H), including the verbatim transcript of the hearing.
- b. Other documents constituting the remainder of the complete record of proceedings shall be assembled as indicated in Attachment (2) to this Appendix.
- c. Erasures and corrections to the proceedings and recommended findings shall be initialed by the President or Counsel for the Board.

3. TRANSMITTAL OF THE RECORD OF PROCEEDINGS

- a. The complete record of proceedings of the regional physical evaluation board, including all documents which were before the board, shall be submitted to the Physical Review Council. An original and five copies of the NAVSO 6100/16 shall be prepared by the board and distributed as follows:

Original to the Naval Council of Personnel Boards:
Copy 1 to be retained at the Board;

Copy 2 to the member;

(Note: When it would be deleterious to the member's health to receive his copy, this copy shall be filed in the original record of proceedings, unless specifically requested by the legal representative.)

Copy 3 to be filed in Health Record (NAVSO 6100/16 only);

Copy 4 to the cognizant Disability Evaluation System Counselor (NAVSO 6100/16 only);

Copy 5 to Counsel for the Member.

The record of proceedings shall be signed by the President of the Board and Counsel for the Board.

b. Copies of medical records or reports received from sources other than the Armed Services of the United States shall not be furnished members with mental disorders or to members imprisoned or confined to correctional institutions.

c. Copies of medical records shall not be furnished members when such records contain information which may be deleterious to the member's

physical or mental health if so determined by competent medical authority expressed in the medical board report associated with the case.

d. The case record of proceedings shall be expeditiously transmitted to the Naval Council of Personnel Boards (Physical Review Council).

e. The foregoing, however, shall not preclude the review of these records by the Counsel for the Member. The receipt of such copy of the record of proceedings shall give a dated receipt therefor. The record of proceedings forwarded to the Naval Council of Personnel Boards (Physical Review Council) shall include member's signed and dated statement of intention and his statement in rebuttal (if one was filed). The regional board shall indicate when a member has not been provided a copy of the proceedings or, when only part of the proceedings was provided the member, indicate what part of the record was not provided. The board shall request the member to indicate a mailing address when he can be most expeditiously reached. If the rebuttal is not received by the board within fifteen (15) days after mailing of the member's copy of the proceedings, the proceedings shall be forwarded to the Naval Council of Personnel Boards (Physical Review Council) with notification concerning nonreceipt.

4. ACTION SUBSEQUENT TO FORWARDING THE RECORD

In the event any cognizant authority shall receive information, subsequent to the forwarding of a record of proceedings of a regional physical evaluation board and prior to final action thereon, that the member concerned, following his hearing before such board, has: (a) committed an offense or offenses such as are believed by the cognizant authority to have a possible bearing on the case and should therefore be brought to the attention of the Naval Council of Personnel Boards; (b) incurred disability in addition to that presented at the time of his hearing; or (c) suffered an increase in the disability that was evaluated; or that his status has changed in any respect which might af-

fect final action on the record of proceedings, such authority shall immediately forward this information to NCPB by message, with information copies to the Chief of Naval Personnel (NMPC-8) or the Commandant of the Marine Corps (Code MMSR-4), as appropriate, the Judge Advocate General, and the Chief, Bureau of Medicine and Surgery. Such message shall be followed as soon as practicable by a complete report of the matter, together with recommendations concerning the action to be taken. Upon a change in his status occurring subsequent to his hearing before a regional board and prior to final action thereon, which, in his opinion, might affect final action, the member concerned may forward information of such change in the manner provided above.

5. PROCEEDINGS IN REVISION AND NEW HEARINGS

In the event that a regional physical evaluation board is directed to conduct a proceedings in revision, such hearing shall be conducted and the record prepared in the same manner as if the board were meeting in the first instance. The record of proceedings in such case shall be prefixed to the original record. In a *de novo* formal hearing, the transcript and recommended findings of a prior hearing shall not be available to the new board unless presented in evidence by the Counsel for the Member.

6. PROCESSING TIME

In order to provide information concerning the processing time at the various stages of disability evaluation proceedings, the Director, Naval Council of Personnel Boards shall provide a form to be appended to each record of proceedings in duplicate for recording the chronology of each such proceedings from the date the medical records are received from the Naval Council of Personnel Boards to the date of final action. (See Appendix H, NAVSO 6100/9.)

**ATTACHMENT (1)
TO
APPENDIX F**

**EXAMPLE OF A SUMMARY RECORD OF
PROCEEDINGS, REGIONAL PHYSICAL
EVALUATION BOARDS**

**RECORD OF PROCEEDINGS
REGIONAL PHYSICAL EVALUATION BOARD
(address)**

DATE :

MEMBER: :

Name :

Rank :

SSN :

Address :

BOARD MEMBERS: :

President :

Member :

Medical Member :

COUNSEL FOR THE BOARD :

COUNSEL FOR THE MEMBER:

REPORTER :

The Board was legally convened with the above named persons present in the indicated capacities. No member of the Board was aware of any reason which would preclude him from according the member a fair and impartial hearing. There were no challenges. Board Members, the Reporter and Counsel for the Board and the Member not previously sworn were sworn. Counsel qualifications were as required by the *Disability Evaluation Manual*. The Member's rights were (or had been) fully explained to him, and it was ascertained that he understood them. Papers pertaining to the case (available to the member and his counsel) were offered into evidence by the Counsel for the Board and, there being no objection, were accepted. The member did elect to testify under oath.

All essential information with reference to the Member's current medical status, as contained in the accompanying records, was carefully considered by the Regional Physical Evaluation Board.

The following additional significant information was elicited in the course of the hearing:

**ATTACHMENT (2)
TO
APPENDIX F**

**ASSEMBLY OF RECORDS OF REGIONAL
PHYSICAL EVALUATION BOARD PROCEEDINGS
FOR TRANSMITTAL TO THE NAVAL COUNCIL OF
PERSONNEL BOARDS**

**ASSEMBLY OF RECORDS OF REGIONAL PHYSICAL EVALUATION BOARD
PROCEEDINGS FOR TRANSMITTAL TO THE
NAVAL COUNCIL OF PERSONNEL BOARDS**

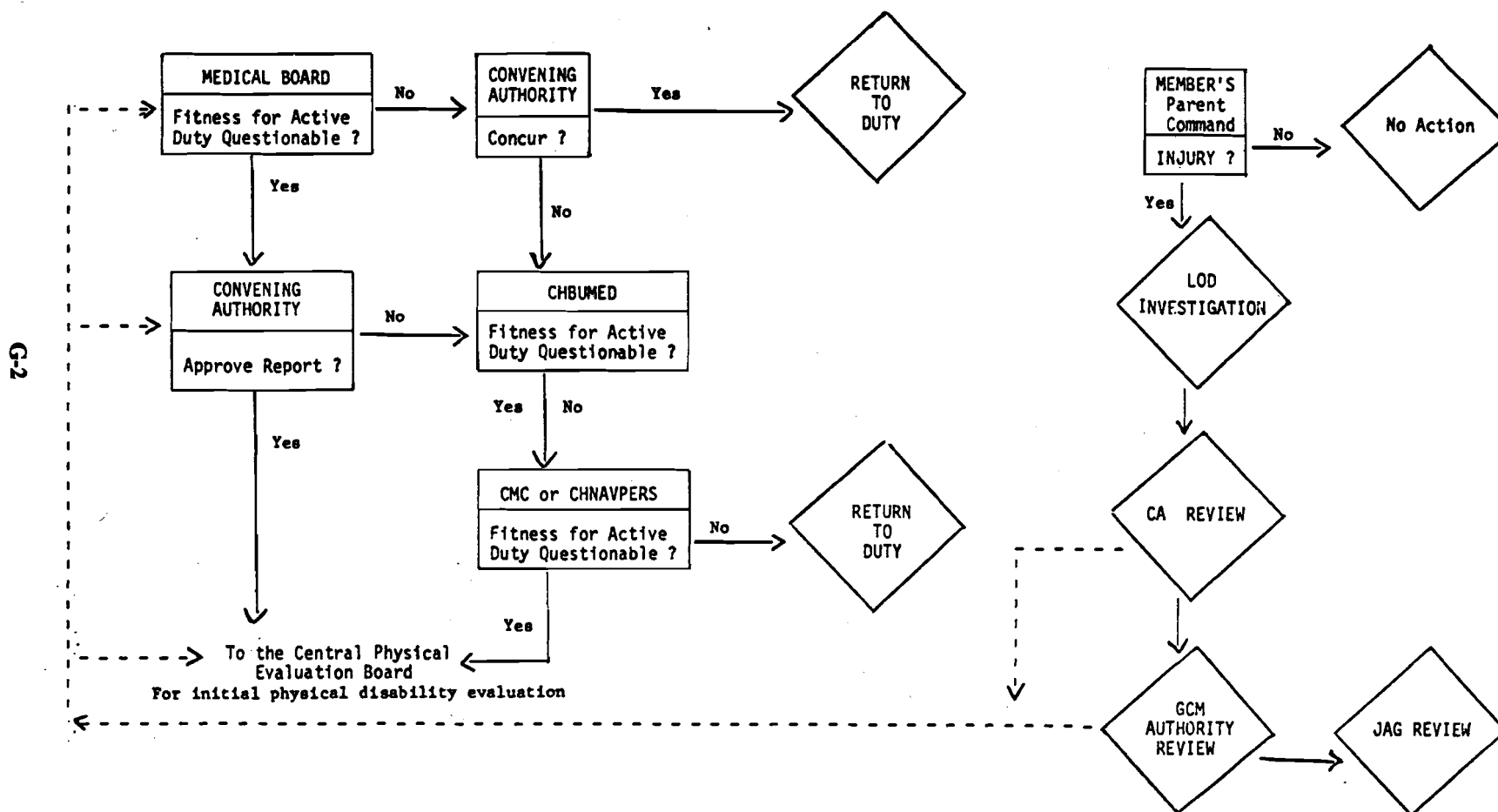
Documents are to be assembled in the following order.
Asterisk indicates omission when not applicable.

1. NAVSO 6100/9 (Cover Sheet)
- *2. SECNAV Action
- *3. NPDRB Action
- *4. PRC Action
5. NAVSO 6100/17. Recommended Findings (with acceptance/rejection)
6. NAVSO 6100/16. PEB Proceedings (including verbatim record)
7. Transcript of hearing
- *8. Minority Findings (when appropriate)
9. NAVSO 6100/18, A or B, as appropriate. Notification for Formal Hearing.
- *10. Copy of Member's Orders
- *11. NCPB Letter Requesting Hearing/Orders
12. NAVSO 6100/17. CPEB Recommended Findings (with acceptance/rejection)
13. NAVSO 6100/16. CPEB Proceedings
14. Medical Board Report, with Health Record and Clinical Record
15. Other documents accepted as evidence
- *16. LOD Investigation Report (when appropriate)
17. Statement of Service

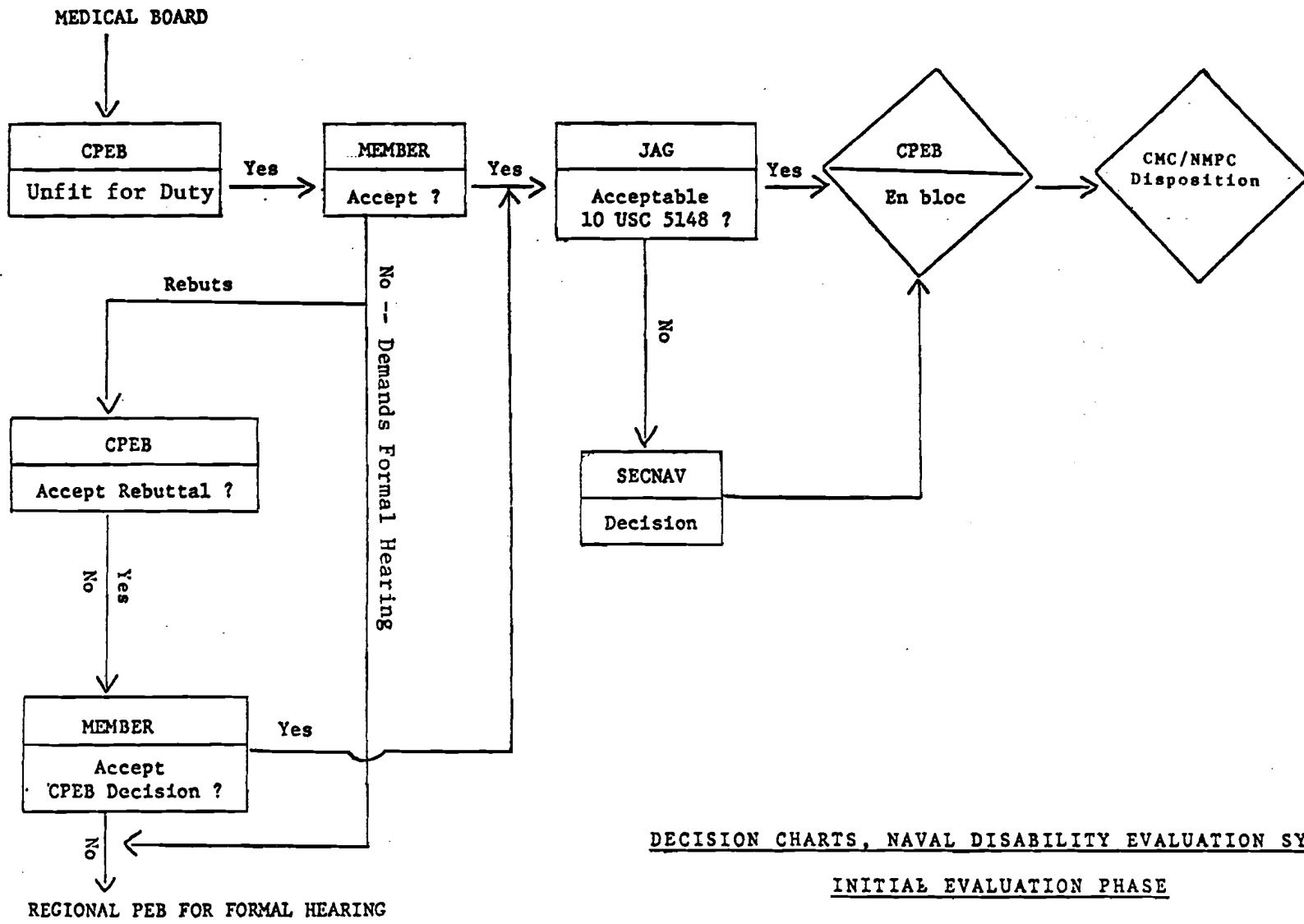
Appendix G

**DECISION CHARTS, NAVAL DISABILITY
EVALUATION SYSTEM**

DECISION CHARTS, NAVAL DISABILITY EVALUATION SYSTEM
PRE-DISABILITY EVALUATION PHASE

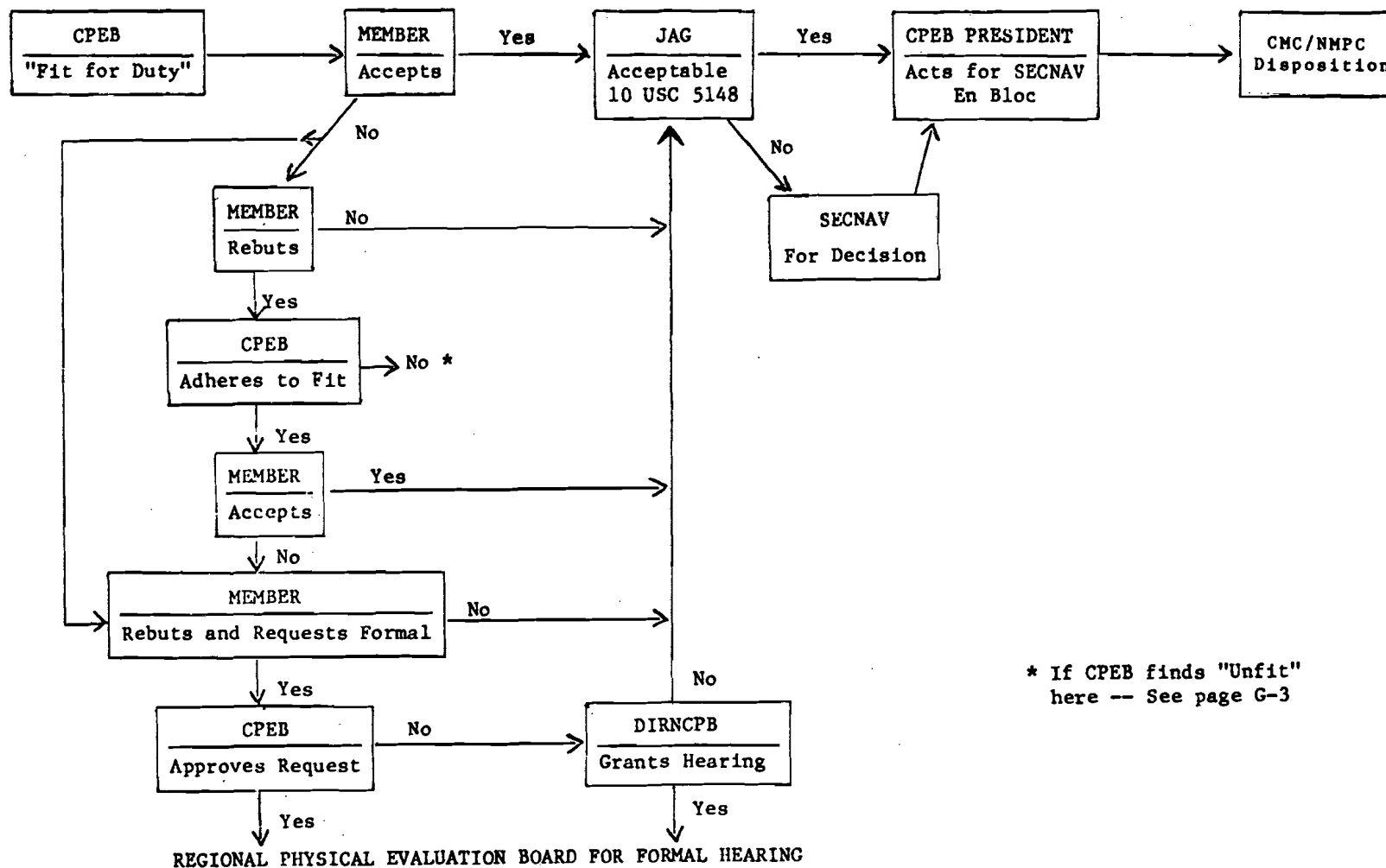


G-3

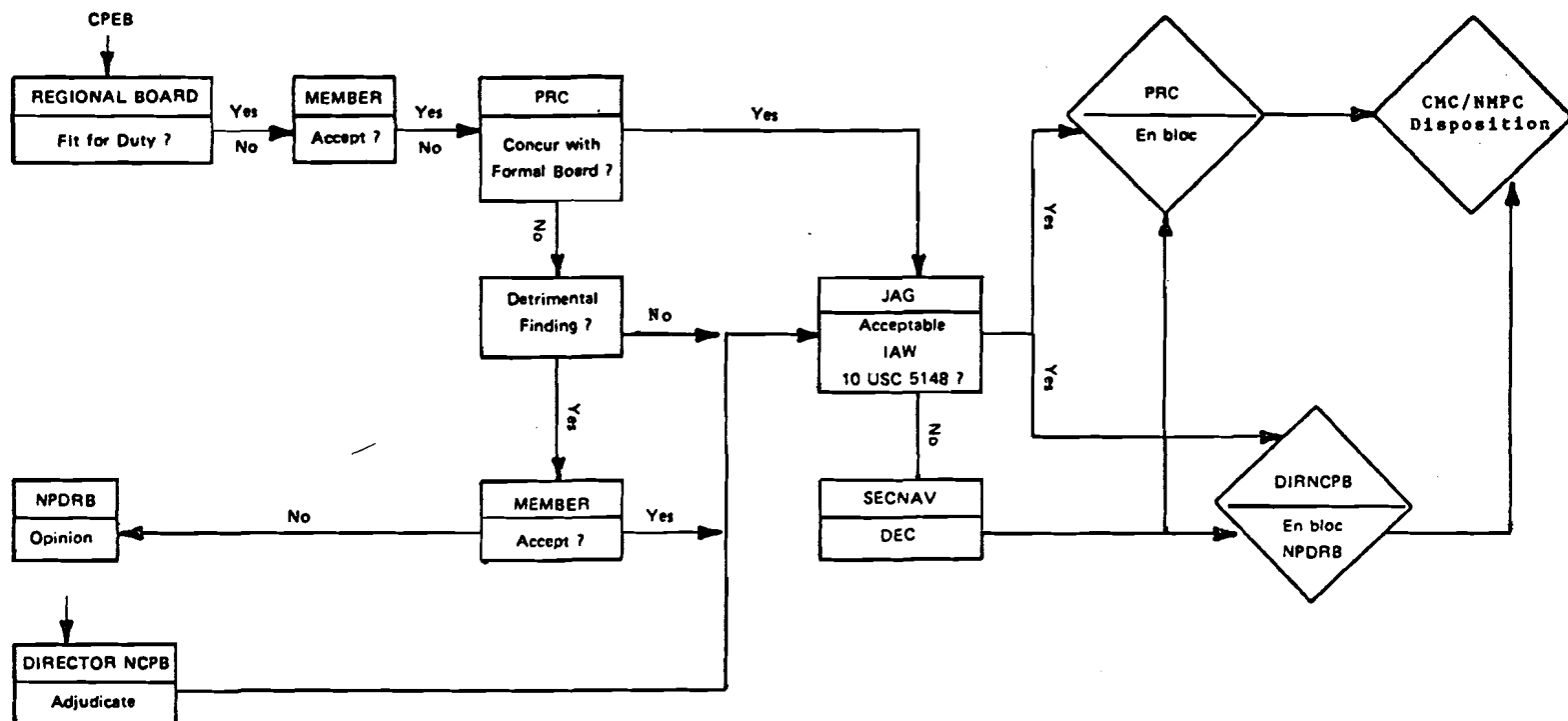


DECISION CHARTS, NAVAL DISABILITY EVALUATION SYSTEM
INITIAL EVALUATION PHASE

DECISION CHARTS, NAVAL DISABILITY EVALUATION SYSTEM
CPEB FINDING OF "FIT FOR DUTY"



DECISION CHARTS, NAVAL DISABILITY EVALUATION SYSTEM
INTERMEDIATE/FINAL EVALUATION AND APPELLATE REVIEW



G-5

Appendix H

PRINCIPAL FORMS EMPLOYED IN THE DISABILITY EVALUATION SYSTEM

<i>Number</i>	<i>Title</i>	
NAVSO 6100/3	TDRL Re-evaluation	H-2
NAVSO 6100/9	Record of Proceedings of a Physical Evaluation Board.	H-3
NAVSO 6100/15	Central Physical Evaluation Board Voting Record	H-4
	PRC Record and Control Card.	H-5
NAVSO 6100/16	Physical Evaluation Board-Proceedings and Findings	H-6
NAVSO 6100/17	Notification to Member of Recommended Findings.	H-7
NAVSO 6100/18	Notification to Party of Formal Hearings	H-8
NAVSO 6100/18A	Notification to Party of Formal Hearing in Absentia	H-10
NAVSO 6100/18B	Notification to Legal Representative of Formal Hearing	H-12
NAVSO 6100/19	Disability Counseling Worksheet	H-14
NAVSO 6100/22	Physical Review Council Action	H-15
NAVSO 6100/23	PEB Control Card.	H-16
Sample Form	Certificate Relative to a Full and Fair Hearing	H-17
NAVSO 6100/25	Statement of Acceptance or Non-Acceptance of Substitute Findings of the Physical Review Council	H-18

NOTE:

NAVSO Forms listed above may be obtained from the Executive Secretary, Disability Evaluation System, Room 905, 801 North Randolph Street, Arlington, Virginia 22203; Autovon 226-4371.

NAVJAG 5800/15, S/N 0105-LF-105-8075; NAVMED 6100/2, S/N 0105-LF-208-2004; NAVPERS 1830/1, S/N 0106-LF-018-3006; and OPNAV 5102/1, S/N 0107-LF-051-0205 may be obtained through normal channels in accordance with NAVSUP 2002.

NAVMC 10767 may be obtained through normal Marine Corps source of supply.

NAME		RANK/RATE		USN — USNR USMC — USMCR		RET	SSN	RETIREMENT DATE (Mo./Yr.)
DIAGNOSES (and ICD-9 Codes)								SECNAV ACTION AND DATE
ACTIVE SERVICE:								
METHOD OF RATING	PERIODIC EXAMINATION DATE	DONE						
		RCD						
	DATE OF CPES ACTION							
	FIT FOR DUTY							
	CONTINUE TDRL							
	PERMANENT							
	UNFIT AND DISABILITY RATING							
INITIAL	MED MBR.							
	NAVY MBR.							
	MARINE MBR.							
TDRL RE-EVALUATION NAVSO 61003 (Rev. 2-81)								

H-2

RECORD OF PROCEEDINGS OF A PHYSICAL EVALUATION BOARD

NAME			RANK/RATE			SERVICE			SSN								
1. MEDICAL BOARD FROM:						2. REFERRAL											
						<input type="checkbox"/> DIRECT			<input type="checkbox"/> INDIRECT								
3. CASE RETURNED						4. LIMITED DUTY											
<input type="checkbox"/> MEDICAL INFO <input type="checkbox"/> LEGAL INFO <input type="checkbox"/> OTHER						<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED <input type="checkbox"/> N/A											
5. PLACE OF HEARING						6. PPE NUMBER (TORL)											
<input type="checkbox"/> CPFB <input type="checkbox"/> BETHESDA <input type="checkbox"/> GLAKES <input type="checkbox"/> SAN DIEGO						<input type="checkbox"/> ONE <input type="checkbox"/> TWO <input type="checkbox"/> THREE <input type="checkbox"/> N/A											
7. FINAL PERCENTAGE OF CHANGE (TORL)						8. PARTY ACTION ON CPFB RECOMMENDATION											
<input type="checkbox"/> NO CHANGE <input type="checkbox"/> INCREASE <input type="checkbox"/> DECREASE <input type="checkbox"/> N/A						<input type="checkbox"/> ACCEPT <input type="checkbox"/> REJECT <input type="checkbox"/> NO REPLY											
9. PRC ACTION ON CPFB RECOMMENDATION																	
<input type="checkbox"/> CONCUR <input type="checkbox"/> INCREASE <input type="checkbox"/> DECREASE <input type="checkbox"/> FIT/UNFIT <input type="checkbox"/> UNFIT/FIT <input type="checkbox"/> N/A																	
10. FORMAL PEB ACTION ON CPFB RECOMMENDATION																	
<input type="checkbox"/> NO CHANGE <input type="checkbox"/> INCREASE <input type="checkbox"/> DECREASE <input type="checkbox"/> FIT/UNFIT <input type="checkbox"/> UNFIT/FIT <input type="checkbox"/> N/A																	
11. PRC ACTION ON PEB RECOMMENDATION																	
<input type="checkbox"/> CONCUR <input type="checkbox"/> INCREASE <input type="checkbox"/> DECREASE <input type="checkbox"/> FIT/UNFIT <input type="checkbox"/> UNFIT/FIT <input type="checkbox"/> N/A																	
12. PARTY ACTION ON PEB RECOMMENDATION						13. PARTY ACTION ON PRC SUBFINDINGS											
<input type="checkbox"/> ACCEPT <input type="checkbox"/> REJECT <input type="checkbox"/> NO REPLY <input type="checkbox"/> N/A						<input type="checkbox"/> ACCEPT <input type="checkbox"/> REJECT <input type="checkbox"/> NO REPLY <input type="checkbox"/> N/A											
14. PROCESSING TIME DATA																	
ACTION			CALENDAR DATE			JULIAN DATE			ACTION			CALENDAR DATE			JULIAN DATE		
1. DATE OF MEDBO									11. R/P REC BY PRC								
2. MEDBO RECEIVED AT ONCE									12. SUBFINDINGS TO PARTY								
3. RETURNED FOR INFO/LOO									13. STATEMENT FROM PARTY								
4. INFORMATION RECEIVED									14. CASE TO PER								
5. CASE CONSIDERED									15. HEARING BY PEB								
6. FINDINGS TO PARTY									16. R/P REC BY PRC								
7. STATEMENT FROM PARTY									17. TO CMC/CNP RE LO								
8. RECONSIDERED									18. RETURNED TO PRC								
9. REVISED FINDINGS TO PARTY									19. TO NPDRB								
10. NEW STATEMENT FROM PARTY									20. TO JAG								
REMARKS						21. FINAL ACTION (EN BLOC)											

CENTRAL PHYSICAL EVALUATION BOARD
VOTING RECORD

NAME		HOSPITAL	
DIAGNOSES (ICD9 CODES REQUIRED)		V.A. CODE NUMBERS	PERCENT
NAVY COMMENTS			
MARINE COMMENTS			
MEDICAL COMMENTS			

COMPETENT

☐ YES ☐ NO

LIMITED DUTY

☐ YES ☐ NO

RECOMMENDED FINDINGS	NAVY	MARINE	MEDICAL
FIT FOR DUTY			
(1) UNFIT			
(2) INCURRED (AGGRAVATED)			
(3) (A) INTENTIONAL MISCONDUCT WILLFUL NEGLECT			
(B) UNAUTHORIZED ABSENCE			
(4) (A) PROXIMATE RESULT			
(B) INCURRED WAR OR NE			
(C) OVER 6 YEARS			
(D) INCURRED 9-15-78-9-30-82			
(E) 4A THROUGH 4D NOT APPLICABLE			
(5) MAY BE PERMANENT			
(5) IS PERMANENT			
(6) COMBINED DISABILITY			
INITIALS			

NAME AND LOCATION OF COUNSELOR _____

DATE OF PEB ACTION _____

PRC RECORD AND CONTROL CARD						ACTIVE SERVICE		NAME	RANK/RATE	SERVICE	SSN	DATE RC'D
RECOMMENDED FINDINGS	PEB	NAVY	MARINE	MEDICAL	YEARS	MONTHS						
(1) FIT FOR DUTY												
(2) UNFIT												
(3) INCURRED (AGGRAVATED)												
(3) (A) INTENTIONAL MISCONDUCT												
WILLFUL NEGLIGENCE												
(B) UNAUTHORIZED ABSENCE												
(4) (A) PROXIMATE RESULT												
(B) INCURRED WAR OR NE												
(C) OVER 8 YEARS												
(D) INCURRED 9-18-78-9-30-82												
(E) 4A THROUGH 4D NOT APPLICABLE												
(5) MAY BE PERMANENT												
(6) IS PERMANENT												
(6) COMBINED DISABILITY												
INITIALS												
REBUTTAL (CHECK ONE)						DISPOSITION						
<input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NOT REC'D												
SUBFINDINGS - RATIONALE												

SECNAV ACTION

ADVERSE ☐ NOT ADVERSE ☐

NAVSOP 6100/15 REV. 12-81

PHYSICAL EVALUATION BOARD - PROCEEDINGS AND FINDINGS

PROCEEDINGS <input type="checkbox"/> Informal (CPEB) <input type="checkbox"/> Formal	PLACE OF FORMAL <input type="checkbox"/> Bethesda <input type="checkbox"/> San Diego <input type="checkbox"/> Great Lakes	MEMBER (LAST, FIRST, MIDDLE INITIAL)		
DATE OF PROCEEDINGS		SSN	RANK/RATE	SERVICE
NAME & LOCATION OF COUNSELOR OR COUNSEL FOR THE MEMBER.				

RECOMMENDED FINDINGS (Indicate applicable statements)

<input type="checkbox"/> THE MEMBER IS FIT FOR DUTY	DISABILITY RATING
<input type="checkbox"/> 1 THE MEMBER IS UNFIT BECAUSE OF PHYSICAL DISABILITY:	
DIAGNOSES (ICD 9 Codes Required)	V.A. CODES
	PERCENT

☐ MINORITY REPORT ATTACHED * DIAGNOSIS RESULTING IN FINDING OF UNFIT

- ☐ 2 THE DISABILITY WAS (NOT) (INCURRED) (AGGRAVATED) WHILE ENTITLED TO RECEIVE BASIC PAY
- ☐ 3A THE DISABILITY IS (NOT) DUE TO INTENTIONAL MISCONDUCT OR WILLFUL NEGLECT
- ☐ 3B THE DISABILITY WAS (NOT) INCURRED DURING A PERIOD OF UNAUTHORIZED ABSENCE
- ☐ 4A IS THE PROXIMATE RESULT OF ACTIVE DUTY OR INACTIVE DUTY TRAINING
- ☐ 4B INCURRED IN LINE OF DUTY IN TIME OF WAR OR NATIONAL EMERGENCY
- ☐ 4C THE MEMBER HAS AT LEAST EIGHT YEARS OF ACTIVE SERVICE
- ☐ 4D THE DISABILITY WAS INCURRED IN LINE OF DUTY DURING THE PERIOD BEGINNING ON 9/15/78 and ending 9/30/82
- ☐ 4E 4A THROUGH 4D NOT APPLICABLE
- ☐ 5 THE DISABILITY IS (MAY BE) PERMANENT
- ☐ 6 THE DISABILITY IS RATABLE AS SET FORTH ABOVE AT PERCENT

LIMITED DUTY CONSIDERATION

- ☐ L.D. IS PRECLUDED BY THE NATURE OR SEVERITY OF THE MEMBERS DISABILITY.
- ☐ FINAL DISPOSITION DEFERRED. MEMBER IS TO BE RETAINED IN A LIMITED DUTY STATUS UNTIL:

DISPOSITION:

AUTHENTICATION

NAME, RANK & SIGNATURE OF PRESIDENT	NAME & RANK OF MEDICAL MEMBER
NAME & RANK OF NON-MEDICAL MEMBER	NAME, RANK & SIGNATURE OF RECORDER OR COUNSEL FOR THE BOARD

The proceedings of the P.E.B. have been reviewed in accordance with 10 USC 5148 and are legal

DATE

DATE TO JAG

BY DIRECTION OF JAG

NAVSO 6100/16 (REV. 1-81)

FORWARD IN DUPLICATE

NOTIFICATION TO MEMBER OF RECOMMENDED FINDINGS

PROCEEDINGS <input type="checkbox"/> INFORMAL (CPEB) <input type="checkbox"/> FORMAL	PLACE OF FORMAL <input type="checkbox"/> GREAT LAKES <input type="checkbox"/> BETHESDA <input type="checkbox"/> SAN DIEGO	3. MEMBER (Last, first, middle initial)		
		4. SSN	5. RANK/RATE	6. SERVICE
7. DATE		8. NAME AND ADDRESS OF COMMAND CURRENTLY HOLDING MEMBER'S SERVICE RECORD		

RECOMMENDED FINDINGS (Indicate applicable statements)

<input type="checkbox"/> THE MEMBER IS FIT FOR DUTY		DISABILITY RATING	
<input type="checkbox"/> 1 THE MEMBER IS UNFIT BECAUSE OF PHYSICAL DISABILITY:			
DIAGNOSES (ICD 9 Codes Required)		V.A. CODES	PERCENT
<input type="checkbox"/> MINORITY REPORT ATTACHED * DIAGNOSIS RESULTING IN FINDING OF UNFIT <input type="checkbox"/> 2 THE DISABILITY WAS (NOT) (INCURRED) (AGGRAVATED) WHILE ENTITLED TO RECEIVE BASIC PAY <input type="checkbox"/> 3A THE DISABILITY IS (NOT) DUE TO INTENTIONAL MISCONDUCT OR WILLFUL NEGLECT <input type="checkbox"/> 3B THE DISABILITY WAS (NOT) INCURRED DURING A PERIOD OF UNAUTHORIZED ABSENCE <input type="checkbox"/> 4A IS THE PROXIMATE RESULT OF ACTIVE DUTY OR INACTIVE DUTY TRAINING <input type="checkbox"/> 4B INCURRED IN LINE OF DUTY IN TIME OF WAR OR NATIONAL EMERGENCY <input type="checkbox"/> 4C THE MEMBER HAS AT LEAST EIGHT YEARS OF ACTIVE SERVICE <input type="checkbox"/> 4D THE DISABILITY WAS INCURRED IN LINE OF DUTY DURING THE PERIOD BEGINNING ON 9/15/78 and ending 9/30/82 <input type="checkbox"/> 4E 4A THROUGH 4D NOT APPLICABLE <input type="checkbox"/> 5 THE DISABILITY (IS) (MAY BE) PERMANENT <input type="checkbox"/> 6 THE DISABILITY IS RATABLE AS SET FORTH ABOVE AT PERCENT		COUNSELING CERTIFICATION I certify that I have explained the results of the recommended findings of this Physical Evaluation Board to the member concerned (or to his Legal Representative) and informed him of his right to submit a statement in rebuttal or to demand/request a formal hearing. _____ DATE _____ SIGNATURE OF COUNSELOR/COUNSEL FOR THE MEMBER _____ NAME AND RANK/RATE OF COUNSEL	

ACTION OF MEMBER

Having been advised of the recommended findings of the Physical Evaluation Board as outlined above and having received an explanation of the results of these findings and of my rights, I hereby:

UNFIT FOR DUTY (Initial One)

- ☐ ACCEPT THE RECOMMENDED FINDINGS
- ☐ SUBMIT A STATEMENT IN REBUTTAL
- ☐ DEMAND A FORMAL HEARING (Applicable only if this was an informal hearing)

DATE _____

FIT FOR DUTY (Initial One)

- ☐ ACCEPT THE RECOMMENDED FINDING
- ☐ SUBMIT A STATEMENT IN REBUTTAL SETTING FORTH THE SPECIFIC REASONS WHY I CONSIDER THE FINDING TO BE INCORRECT.
- ☐ REQUEST A FORMAL HEARING. MY REASONS ARE ATTACHED.

SIGNATURE OF MEMBER (OR LEGAL REPRESENTATIVE) _____

NAVSO 0100/10 (Rev. 9-79)

NOTIFICATION TO MEMBER OF FORMAL HEARINGS

1. PERSONNEL DATA			
1. NAME OF MEMBER (Last, First, Middle Initial)	2. RANK/RATE	3. SERVICE/FILE NO.	4. SSN
5. PLACE OF HEARING PHYSICAL EVALUATION BOARD	6. DATE OF HEARING	7. TIME OF HEARING	
8. APPOINTED MILITARY COUNSEL	9. ADDRESS (Zip Code) AND TELEPHONE NUMBER		

10. REMARKS:

- a. You are hereby notified to appear in proper uniform before the Physical Evaluation Board which will consider your eligibility for disability retirement or discharge on the date and at the time and place indicated above.
- b. The person named above is the regularly appointed military counsel. He will advise you of your rights and assist in the preparation of your case. He will represent you during the hearing, or, unless properly excused, act as associate counsel in the event you desire to exercise your right to be represented by civilian or military counsel of your own choice. If you are represented by counsel other than the appointed military counsel, it must be at your own expense.
- c. You and your counsel are entitled to examine all documentary evidence, to examine and cross-examine witnesses, and to present your case orally or in writing.
- d. The following witnesses will be called by the board: (If none, so state)
- e. The board will arrange to secure the attendance of other available military witnesses desired by you or, under appropriate circumstances, their depositions and other evidence.
- f. Request you complete and sign Section 2 on the reverse side of this notice indicating your intentions and desires. Return the original and one copy to the designated PEB without delay.

DATE OF NOTICE

SIGNATURE OF PEB REPRESENTATIVE

NOTIFICATION TO MEMBER OF FORMAL HEARING (Continued)

2. REPLY FROM MEMBER

1. REPLY

- a. This will acknowledge receipt of the notice of the time and place of the formal hearing referred to in Section 1 of this notice.
- b. I do ☐ do not ☐ designate the regularly appointed military counsel named in Section 1 to represent me in the hearing of my case.
- c. I desire that _____
(Name and Address)
act as my counsel and represent me in the hearing of my case. I do ☐ do not ☐ desire that the regularly appointed military counsel act as associate counsel. (This item applies only when other than the regularly appointed military counsel is desired.)
- d. I do ☐ do not ☐ request three additional days in which to prepare my case.
- e. I desire that the Physical Evaluation Board arrange for the attendance of available military witnesses whose names and addresses are listed below: (If none, so state)
- f. I understand that military witnesses or other military counsel (if desired) must be reasonably available and that any expenses incurred by the attendance of persons named in Items c and e above will be my responsibility.
- g. I do ☐ do not ☐ waive personal appearance before the board.

2. DATE

3. TYPED NAME AND RANK/RATE OF MEMBER

4. SIGNATURE OF MEMBER

NAVSO 6100/13A (8-70)

NOTIFICATION TO PARTY OF FORMAL HEARING IN ABSENTIA

1. PERSONNEL DATA			
1. NAME OF PARTY (Last, First, Middle Initial)	2. RANK/RATE	3. SERVICE/FILE NO.	4. SSAN
5. PLACE OF HEARING PHYSICAL EVALUATION BOARD	6. DATE OF HEARING	7. TIME OF HEARING	
8. APPOINTED MILITARY COUNSEL	9. ADDRESS (Zip Code) AND TELEPHONE NUMBER		

10. REMARKS:

- A. A formal hearing of the Physical Evaluation Board will be convened on the date and at the time and place indicated above to consider the above named member's eligibility for disability retirement or discharge. Since the member's physical condition precludes his personal appearance, he will not be present at the hearing.
- B. The regularly appointed military counsel named above will advise you of your rights and assist you in the preparation of your case. He will represent you during the hearing, or, unless properly excused, act as associate counsel in the event you desire to exercise your right to be represented by civilian or military counsel of your own choice. If you are represented by counsel other than the appointed military counsel, it must be at your own expense. You may communicate with the regularly appointed military counsel at any time.
- C. The counsel of your choice is entitled to examine all documentary evidence, to examine and cross-examine witnesses, and to present your case orally or in writing.
- D. The following witnesses will be called by the board: (If none, so state)
- E. The board will arrange to secure the attendance of other available military witnesses desired by you or, under appropriate circumstances, their depositions and other evidence.
- F. Following the formal hearing you will be notified of the board's findings and you will be required to indicate whether you concur with the findings or desire to submit a rebuttal. The rebuttal may be prepared by you or, on your request, by the counsel.
- G. Request you complete and sign Section 2 on the reverse side of this notice indicating your intentions and desires. Return the original and one copy to the designated PEB without delay.

DATE OF NOTICE	SIGNATURE OF PEB REPRESENTATIVE
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NOTIFICATION TO PARTY OF FORMAL HEARING IN ABSENTIA (Continued)

2. REPLY FROM PARTY

1. REPLY

- a. This will acknowledge receipt of the notice of the time and place of the formal hearing referred to in Section 1 of this notice.
- b. I do ☐ do not ☐ designate the regularly appointed military counsel named in Section 1 to represent me in the hearing of my case.
- c. I desire that _____
(Name and Address)
act as my counsel and represent me in the hearing of my case. I do ☐ do not ☐ desire that the regularly appointed military counsel act as associate counsel. (This item applies only when other than the regularly appointed military counsel is desired.)
- d. I request that my _____
(Relationship, Name and Address)
be permitted to be present during the hearing of my case. (If the attendance of Next-of-Kin is not desired, so state.)
- e. I do ☐ do not ☐ request three additional days in which to prepare my case.
- f. I desire that the Physical Evaluation Board arrange for the attendance of available military witnesses whose names and addresses are listed below: (If none, so state.)
- g. I request that the Physical Evaluation Board notify the persons named in Items c and d above of the date, time, and place of the formal hearing.
- h. I understand that military witnesses or other military counsel (if desired) must be reasonably available and that any expenses incurred by the attendance of persons named in Items c, d, and f above will be my responsibility.

2. DATE	3. TYPED NAME AND RANK/RATE OF MEMBER	4. SIGNATURE OF PARTY

NAVSJ 6100/188 (8-70)

NOTIFICATION TO LEGAL REPRESENTATIVE OF FORMAL HEARING

I. PERSONNEL DATA			
1. NAME AND RELATIONSHIP OF NEXT OF KIN		2. COMPLETE MAILING ADDRESS (Zip Code)	
3. NAME OF PARTY (Last, First, Middle Initial)		4. RANK/RATE	5. SERVICE/FILE NO.
			6. SSAN
7. PLACE OF HEARING		8. DATE OF HEARING	
PHYSICAL EVALUATION BOARD		9. TIME OF HEARING	
10. APPOINTED MILITARY COUNSEL		11. ADDRESS (Zip Code) AND TELEPHONE NUMBER	

12. REMARKS:

- a. A formal hearing of the Physical Evaluation Board will be convened on the date and at the time and place indicated above to consider the above named member's eligibility for disability retirement or discharge. Since the member's physical condition precludes his personal appearance, he will not be present at the hearing.
- b. You may designate the regularly appointed military counsel named above to represent the member at the formal hearing or you may arrange for representation by other civilian or military counsel of your choice at your own expense. You may attend the hearing if you desire and you and your counsel are entitled to examine all documentary evidence, to examine and cross-examine witnesses, and to present other evidence orally or in writing. You may communicate with the regularly appointed military counsel at any time.
- c. The following witnesses will be called by the board: (If none, so state)
- d. The board will arrange to secure the attendance of other available military witnesses desired by you or, under appropriate circumstances, their depositions and other evidence.
- e. Following the formal hearing you will be notified of the board's findings and you will be required to indicate whether you concur with the findings or desire to submit a rebuttal. The rebuttal may be prepared by you or, on your request, by the counsel.
- f. Please complete Section II on the reverse side of this notice indicating your intentions and desires and return the original and one copy without delay. If your reply is not received by the designated Physical Evaluation Board within _____ days of the date shown below, it will be presumed that you will not attend the hearing and that you are satisfied with the appointed military counsel.

DATE OF NOTICE	SIGNATURE OF PEB REPRESENTATIVE
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B-4030

NOTIFICATION TO LEGAL REPRESENTATIVE OF FORMAL HEARING (Continued)

II. REPLY FROM NEXT OF KIN

I. REPLY:

- a. This will acknowledge receipt of the notice of the time and place of the formal hearing referred to in Section I of this notice.
- b. I do ☐ do not ☐ designate the regularly appointed military counsel named in Section I to serve as counsel in the hearing of this case.
- c. I desire that _____
(Name and Address)
serve as counsel in the hearing of this case. I do ☐ do not ☐ desire that the regularly appointed military counsel act as associate counsel. (This item applies only when other than the regularly appointed military counsel is desired.)
- d. I do ☐ do not ☐ desire that the hearing be delayed for three days to provide additional time in which to prepare the case.
- e. I desire that the Physical Evaluation Board arrange for the attendance of available military witnesses whose names and addresses are listed below: (If none, so state)
- f. I request that the Physical Evaluation Board notify the person named in Item c above of the date, time, and place of the formal hearing. (This item only applies if Item c has been completed.)
- g. I understand that military witnesses or other military counsel (if desired) must be reasonably available and that any expenses incurred by the attendance of persons named in Items c and e above will be my responsibility.
- h. I do ☐ do not ☐ desire to be present at the hearing.

DATE

SIGNATURE OF NEXT OF KIN

NAVSO 6100/18B (8-70) (REVERSE)

NAVSJ 6100/19 (8-70)

DISABILITY COUNSELING WORKSHEET

DATE OF
COUNSELING

Entitlement to disability retired or severance pay depends on many factors which are not definitely known at the time you are being counseled on the recommended findings of the PEB. For example, the final disposition and percentage rating, the disability grade, the official service computations, and the effective date of separation, all depend on actions taken after a case arrives at Washington. However, by making CERTAIN ASSUMPTIONS FOR THE PURPOSE OF EXAMPLE ONLY, it is possible to estimate what your approximate disability pay would be if the PEB findings were approved without change. ALTHOUGH THE INFORMATION USED IN COMPLETING THIS WORKSHEET IS SUBJECT TO CHANGE, it will serve to illustrate how the disability pay would be computed under these particular assumptions. If disability retirement is approved by the Secretary of the Navy, the Navy Finance Center computes the rate of retired pay under all applicable formulas and administratively selects the formula that is most favorable to you.

1. PARTY		2. AS OF DATE FOR ESTIMATING YEARS OF SERVICE		3. DISABILITY GRADE	
4. YEARS OF SERVICE FOR BASE PAY		5. MONTHLY BASE PAY		6. YEARS OF ACTIVE SERVICE	
				7. YEARS OF SERVICE FOR VOLUNTARY RETIREMENT	
8. ESTIMATED RETIRED PAY FORMULAS				9. ESTIMATED NET RETIRED PAY	
A. % (SERVICE) \$				A. HIGHEST OF 8A OR B \$	
B. % (DISABILITY) \$				B. LESS TAX (8D) \$	
C. SUBJECT TO FEDERAL WITHHOLDING (LINE A MINUS B) \$				C. NET RETIRED PAY \$	
D. TAX WITH EXEMPTIONS \$				NOTE: NET RETIRED PAY WILL BE FURTHER REDUCED BY AMOUNT OF VOLUNTARY ALLOTMENTS OR CONTRIBUTIONS TO RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN, IF ANY.	
10. ESTIMATED DISABILITY SEVERANCE PAY				11. NOTES	
FORMULA: TAKE TWICE THE AMOUNT OF ITEM 5 AND MULTIPLY BY THE NUMBER OF YEARS OF SERVICE UP TO A MAXIMUM OF 12 YEARS.					

D-4887

PHYSICAL REVIEW COUNCIL ACTION

PROCEEDINGS	PLACE OF FORMAL	MEMBER (Last, First, Middle Initial)		
<input type="checkbox"/> INFORMAL (CPEB)	<input type="checkbox"/> BETHESDA <input type="checkbox"/> SAN DIEGO			
<input type="checkbox"/> FORMAL	<input type="checkbox"/> GREAT LAKES	SSN	RANK/RATE, SERVICE	DATE

☐ CONCUR IN THE FINDINGS OF THE PEB
☐ DO NOT CONCUR IN THE FINDINGS OF THE PEB, AND PROPOSE THE FOLLOWING SUBSTITUTE FINDINGS
 ☐ ADVERSE ☐ NOT ADVERSE
☐ THE MEMBER IS FIT FOR DUTY ☐ THE MEMBER IS UNFIT BECAUSE OF PHYSICAL DISABILITY ☐ REBUTTAL CONSIDERED

DIAGNOSES ICD9 (Codes required)	VA CODES	PERCENT
<input type="checkbox"/> MINORITY REPORT ATTACHED <div style="margin-left: 100px;">*DIAGNOSIS RESULTING IN FINDING OF UNFIT</div>		

FINDINGS BLOCK	RATIONALE
<input type="checkbox"/> 2 THE DISABILITY WAS (NOT) (INCURRED) (AGGRAVATED) WHILE ENTITLED TO RECEIVE BASIC PAY <input type="checkbox"/> 3A THE DISABILITY IS (NOT) DUE TO INTENTIONAL MISCONDUCT OR WILLFUL NEGLECT <input type="checkbox"/> 3B THE DISABILITY WAS (NOT) INCURRED DURING A PERIOD OF UNAUTHORIZED ABSENCE <input type="checkbox"/> 4A IS THE PROXIMATE RESULT OF ACTIVE DUTY OR INACTIVE DUTY TRAINING <input type="checkbox"/> 4B INCURRED IN LINE OF DUTY IN TIME OF WAR OR NATIONAL EMERGENCY <input type="checkbox"/> 4C THE MEMBER HAS AT LEAST EIGHT YEARS OF ACTIVE SERVICE <input type="checkbox"/> 4D THE DISABILITY WAS INCURRED IN LINE OF DUTY DURING THE PERIOD BEGINNING ON 9/15/78 AND ENDING 9/30/82 <input type="checkbox"/> 4E 4A THROUGH 4D NOT APPLICABLE <input type="checkbox"/> 5 THE DISABILITY (IS) (MAY BE) PERMANENT <input type="checkbox"/> 6 THE DISABILITY IS RATABLE AS SET FORTH ABOVE AT PERCENT	DISPOSITION:

AUTHENTICATION	
NAME, RANK & SIGNATURE OF PRESIDENT	NAME, RANK & SIGNATURE OF MEDICAL MEMBER
NAME, RANK & SIGNATURE OF NON-MEDICAL MEMBER	NAME, RANK & SIGNATURE OF RECORDER

THE PROCEEDINGS OF THE P.E.B. HAVE BEEN REVIEWED IN ACCORDANCE WITH 10 USC 5148 AND ARE LEGAL

DATE TO JAG _____ BY DIRECTION OF JAG _____ DATE _____

RESPONSE TO ADVERSE SUBSTITUTE FINDINGS	
<input type="checkbox"/> MEMBER ACCEPTS (STATEMENT ATTACHED) <input type="checkbox"/> MEMBER DOES NOT ACCEPT: PROCEEDINGS FORWARDED TO THE NAVAL PHYSICAL DISABILITY REVIEW BOARD FOR REVIEW AND ADVISORY OPINION TO DIR., NCPB.	DATE _____
NAME, RANK & SIGNATURE OF PRESIDENT _____	

NAME, SERVICE NUMBER, RANK/RATE, SERVICE

DISPOSITION		RECORD NUMBER
INITIAL REVIEW		
DATE FORWARDED TO JAG	DATE APPROVED	INDEX NUMBER
RE-EVALUATION		
1. DATE FORWARDED TO JAG	DATE APPROVED	INDEX NUMBER
2.		
3.		

PEB CONTROL CARD - NAVSO 6100/23 (REV. 5-78)

CERTIFICATE RELATIVE TO A FULL AND FAIR HEARING

I certify that it has been fully explained to me that I am suffering from a physical disability, namely _____ which renders me unfit for return to full duty.

I also certify that I have been fully counseled concerning the reasons for my rapid processing for physical disability retirement prior to obtaining optimum service hospital benefits; that I am in further need of hospitalization; and that I will be transferred to an appropriate Veterans Administration hospital for further treatment and rehabilitation.

I further certify that I have been fully counseled in accordance with the Disability Evaluation Manual and that it has been fully explained to me that under 10 U.S.C. 1214 I am entitled, as a matter of right, to a full and fair hearing before a physical evaluation board if I demand such hearing.

With full knowledge of the findings and recommendations of the medical officers in charge of my case and with knowledge of my rights in this matter, as delineated in the Disability Evaluation Manual paragraph 0603e, I hereby certify that I do not demand a hearing before a physical evaluation board and request that my case be processed under the Navy's rapid processing system. I understand that I am not required, and am under no obligation, to give this certificate and I hereby certify that I give the certificate voluntarily.

Date: _____

(Signature)

(Signature of Witness)

STATEMENT OF ACCEPTANCE OR NON-ACCEPTANCE OF SUBSTITUTE FINDINGS
OF THE PHYSICAL REVIEW COUNCIL

DATE

RANK/RATE

NAME

SSN

BRANCH

Complete sentence 1, 2, or 3 by placing an "X" in the space provided:

- ☐ 1. I accept the substitute findings of the Physical Review Council.
- ☐ 2. I do not accept the substitute findings of the Physical Review Council and desire consideration of my case at a formal hearing before a Regional Physical Evaluation Board. (NOTE: COMPLETE THIS LINE ONLY IF CASE WAS NOT PREVIOUSLY CONSIDERED BY A REGIONAL PHYSICAL EVALUATION BOARD).
- ☐ 3. I do not accept the substitute findings of the Physical Review Council and do desire to submit a statement in rebuttal. My statement in rebuttal is attached.

Signature of Member:

ADDRESS OF MEMBER
STREET & NO.

CITY & STATE

ZIP CODE

HOME TELEPHONE

NAVSO 6100/25 (10-76)

Appendix I

DEPUTY SECRETARY OF DEFENSE MEMORANDUM

March 1, 1973

MEMORANDUM FOR The Secretaries of the Military Departments

SUBJECT: Physical Fitness Determinations

Reference: (a) Deputy Secretary of Defense memorandum, subject as above, dated January 29, 1973

I believe it is essential that there be uniformity in the interpretations of physical fitness determinations. The guidelines set forth by reference (a) should do much to correct past differences among your departments in this matter.

To ensure that our revised policies are implemented in a fair and consistent manner, I have directed the Assistant Secretary of Defense (Health and Environment) to review the application of Department of Defense policies to each proposed physical disability separation of a general/flag rank officer or of a Medical Corps officer as part of his monitorship of physical fitness determinations. I have further instructed him that he may discontinue the individual case review in the future for any category of cases if he believes that the category no longer presents any problems.

This pre-review procedure should ensure that we are uniformly applying the policies to the types of cases in which there have been greatest difficulties in the past. Where differences in departmental interpretations are noted, additional guidance will be furnished that can be applied to all other cases within your departments.

Effective immediately, before making a final determination of "unfitness" that would result in the physical disability retirement of a general/flag rank officer or of a Medical Corps officer, the case shall be forwarded to the ASD (H&E) for review. ASD(H&E) will coordinate the case with the Office of the General Counsel and the Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs), as necessary, and expeditiously (by the close of the next business day insofar as possible) return it to you with appropriate comments.

A. P. Clements

Appendix J

DISPOSITION OF RECORDS OF PROCEEDINGS OF PHYSICAL EVALUATION BOARDS

To be promulgated at a later date.

Appendix K

SAMPLE NOTIFICATIONS OF DISABILITY EVALUATION SYSTEM DECISIONS

This Appendix displays samples of the most commonly used notifications of Disability Evaluation System decisions.

Such notifications will be used to advise Service personnel managers of the findings of the Central Physical Evaluation Board and the Physical Review Council. The Physical Review Council notifications of decisions will be the same as the Central Physical Evaluation Board with minor technical changes.

Notifications of decisions in appellate review cases which will be issued by the Director, Naval Council of Personnel Boards are not provided. Such notifications will be issued basically as provided herein with minor changes to conform with the individual case.

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, and records, documents, correspondence and statements associated with the individual cases.

2. *Finding.* In each instance the member named is found to be physically unfit to perform the duties of his/her office, grade, rank or rating on active duty, and a percentage of disability is assigned in accordance with the Veterans Administration Schedule for Rating Disabilities as listed next to the member's names. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* The members listed below shall be permanently retired from the Naval Service with disability benefits in accordance with their individually assigned percentage of disability and in conformity with the provisions of 10 U.S.C. 1201 or 1204, as appropriate.

4. The Chief of Naval Personnel is directed to take appropriate action to effect retirement of these members of the Naval Service. Attention is invited to paragraph 0216 of reference (a).

Identification/
Service

Percentage
of Disability

Veterans Administration
Disability Code Number

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, and records, documents, correspondence and statements associated with the individual cases.

2. *Finding.* In each instance the member named is found to be physically unfit to perform the duties of his/her office, grade, rank or rating on active duty, and a percentage of disability is assigned in accordance with the Veterans Administration Schedule for Rating Disabilities as listed next to the member's names. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* The members listed below shall be placed on the Temporary Disability Retired List and administered in accordance with the provisions of 10 U.S.C. 1210. They shall be accorded disability benefits while in temporary retired status as prescribed in 10 U.S.C. 1202 or 1205, as appropriate.

4. The Chief of Naval Personnel is directed to take appropriate action to effect temporary retirement of these members of the Naval Service. Attention is invited to paragraph 0216 of reference (a).

<u>Identification/ Service</u>	<u>Percentage of Disability</u>	<u>Veterans Administration Disability Code Number</u>
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CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, and records, documents, correspondence and statements associated with the individual cases.
2. *Finding.* In each instance the member named is found to continue to be physically unfit with a physical impairment that has not stabilized at a permanent rate of disability. In each instance the member's name has been carried on the Temporary Disability Retired List for less than five years.
3. *Disposition.* The members listed shall be retained on the Temporary Disability Retired List with the percentage of disability assigned at the time of entry on the Temporary Disability Retired List.
4. The Chief of Naval Personnel is directed to effect the continuation of these members in a temporary disability retired status.

Identification/Service

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following named members of the Naval Service as set forth in the reports of medical boards and physical examinations, together with records, documents correspondence and statements associated with the individual cases. The members' names are currently carried on the Temporary Disability Retired List (TDRL).

2. *Finding.* In each instance the member named is found to be physically unfit for active duty. In each case the disability is permanent, or five years have expired since the member's name was first placed on the TDRL. A percentage of disability is assigned in accordance with the Veterans Administration Schedule for Rating Disabilities, as listed next to the name of each member. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* The members listed below shall be permanently retired from the Naval Service with disability benefits in accordance with their individually assigned percentages of disability and in conformity with the provisions of 10 U.S.C. 1210.

4. The Chief of Naval Personnel is directed to take appropriate action to effect permanent retirement of these members of the Naval Service. Attention is invited to paragraph 0216 of reference (a).

<u>Identification/ Service</u>	<u>Percentage of Disability</u>	<u>Veterans Administration Disability Code Number</u>
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CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following named members of the Naval Service as set forth in the reports of medical boards and physical examinations, together with records, documents correspondence and statements associated with the individual cases. The members' names are currently carried on the Temporary Disability Retired List (TDRL).

2. *Finding.* In each instance the member named is found to be physically unfit for active duty. In each case the disability is permanent, or five years have expired since the member's name was first placed on the TDRL. A percentage of disability is assigned in accordance with the Veterans Administration Schedule for Rating Disabilities, as listed next to the name of each member. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* The members listed below shall be permanently separated from the Naval Service with disability benefits in accordance with their individually assigned percentages of disability and in conformity with the provisions of 10 U.S.C. 1210.

4. The Chief of Naval Personnel is directed to take appropriate action to effect the separation of these members of the Naval Service.

<u>Identification/ Service</u>	<u>Percentage of Disability</u>	<u>Veterans Administration Disability Code Number</u>
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CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, and records, documents, correspondence and statements associated with the individual cases.

2. *Finding.* In each instance the member named is found to be physically unfit to perform the duties of his/her office, grade, rank or rating on active duty, and a percentage of disability is assigned in accordance with the Veterans Administration Schedule for Rating Disabilities as listed next to the name of each member. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* The members listed below shall be permanently separated from the Naval Service with severance pay but without further disability benefit, in conformity with the provisions of 10 U.S.C. 1203 or 1206, as appropriate.

4. The Chief of Naval Personnel is directed to take appropriate action to effect the separation of these members of the Naval Service. Attention is invited to paragraph 0216 of reference (a).

Identification/
Service

Percentage
of Disability

Veterans Administration
Disability Code Number

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, and records, documents, correspondence and statements associated with the individual cases.

2. *Finding.* In each instance the member named is found to be physically unfit to perform the duties of the member's office, grade, rank or rating on active duty because of a physical condition indicated by the ICD-9 Number stated adjacent to the member's name. Further, the condition

(a) existed prior to the member's entry into the Naval Service (EPTE), or

(b) was due to the member's intentional misconduct or willful neglect (IM/WN), or

(c) was incurred during a period of unauthorized absence (IDUA).

The members named are not eligible to receive disability benefits under the provisions of 10 U.S.C. chapter 61 as amended. The disqualifying circumstance is also listed adjacent to the member's name. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* The members listed shall be separated from the Naval Service without entitlement to any benefits prescribed by 10 U.S.C. chapter 61.

4. The Chief of Naval Personnel is directed to take appropriate action to effect the discharge of these members of the Naval Service.

Identification/Service

ICD-9 Number

Disqualifying
Circumstance

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, records, documents, correspondence and statements associated with the individual cases.
2. *Finding.* In each instance the member named is found to be physically fit to perform the duties of his/her office, grade, rank or rating on active duty. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.
3. *Disposition.* The members listed below shall be continued on active duty in a full duty status until such active duty is terminated under other provisions of law.
4. The Chief of Naval Personnel is directed to take appropriate action with regard to continuance of the listed members on active duty.

Identification/Service

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, and records, documents, correspondence and statements associated with the individual cases.
2. *Finding.* No finding as to disability shall be recorded at this time.
3. *Disposition.* The members listed below shall be retained on active duty in a limited duty status until such time as they have completed twenty years of active military service, or until other governing circumstances intervene.
4. By copy of this letter, the Chief, Bureau of Medicine and Surgery is requested to have set forth in the medical records of the listed members the limitations imposed by their physical condition as stated in associated medical board reports.
5. The Chief of Naval Personnel is directed to take appropriate action to continue these members on active duty in a limited duty status and to administer them as prescribed in paragraph 1102d of the Department of the Navy Disability Evaluation Manual, 1982.

Identification/Service

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards and physical examinations, together with records, documents correspondence and statements associated with the individual cases. The members' names are currently carried on the Temporary Disability Retired List (TDRL).
2. *Finding.* In each instance the member named is found to be physically fit to perform the duties of his/her office, grade, rank or rating on active duty. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.
3. *Disposition.* If the members listed below consent and are otherwise qualified, they shall be reappointed or reenlisted and shall resume the active duty or reserve status held at the time of their transfer to the Temporary Disability Retired List.
4. The Chief of Naval Personnel is directed to take appropriate action in the case of each of these members in conformity with 10 U.S.C. 1211.

Identification/Service

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following named members of the Naval Service as set forth in the reports of medical boards and physical examinations, together with records, documents correspondence and statements associated with the individual cases. The members' names are currently carried on the Temporary Disability Retired List (TDRL).

2. *Finding.* In each instance the disabling condition for which the member listed was originally placed on the Temporary Disability Retired List is found to have been cured or corrected. However, each of the members listed is further found to be unfit to perform the duties of his/her office, grade, rank or rating due to a physical impairment or condition which was incurred while the member was not entitled to the receipt of basic pay. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* The members listed below shall be discharged from the Naval Service by reason of physical disability but shall not be authorized to receive the disability benefits set forth in 10 U.S.C. chapter 61, as amended.

4. The Chief of Naval Personnel is directed to take appropriate action to effect the discharge of these members from the Naval Service. Attention is invited to paragraph 0216 of reference (a).

Identification/Serive

IDC-9 Number

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, and records, documents, correspondence and statements associated with the individual cases.

2. *Finding.* No finding shall be recorded for the reason indicated opposite the name of the individual member.

Identification/Service

Reason

EXAMPLE REASONS

Discharged under other provisions of law.

Will be discharged under other provisions of law.

Released from active duty prior to completion of disability evaluation proceedings.

Case withdrawn from the Disability Evaluation System.

Retired under other provisions of law.

Transferred to the Fleet Reserve.

Transferred to the Fleet Marine Corps Reserve.

Due to member's death.

Pending completion of disciplinary action; the _____ (Service) _____ is directed to keep the Executive Secretary, Disability Evaluation System informed of the member's status.

Evaluation terminated; member declared a deserter. Comply with paragraph 0228, DEM 1982, prior to referral.

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Cancellation of Previously Directed Disposition in
specified physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has reconsidered its decisions in the physical disability evaluation cases listed below.
2. The dispositions previously directed by the Notifications of Decision opposite the names of the members listed below are rescinded and cancelled.
3. By separate action to come the President, Central Physical Evaluation Board will promulgate revised Notifications of Decision with regard to each of the cases listed.

Identification/Service

Index Number/Date

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in the reports of medical boards, and records, documents, correspondence and statements associated with the individual cases.

2. *Finding.* In each instance the member named is found to be physically qualified for active duty as a member of the Naval Reserve. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* The members listed below shall be continued in the Ready Reserve of the Naval Reserve.

4. The Chief of Naval Personnel is directed to take appropriate action with regard to continuance of the listed members.

Identification/Service

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in their medical records and other documents, correspondence and statements associated with their individual cases.

2. *Finding.* Each member named has been found to be not physically qualified for active duty as a member of the Naval Reserve. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* Each member listed shall be honorably discharged as provided for in 10 U.S.C. 1004. The Chief of Naval Personnel is directed to take appropriate action to effect this disposition.

Identification/Service

CPEB Index No.

From: President, Central Physical Evaluation Board
To: Chief of Naval Personnel

Subj: Notification of Decision in certain physical disability evaluation cases

Ref: (a) SECNAVINST 1850.4A

1. The Central Physical Evaluation Board has considered the physical condition of the following members of the Naval Service as set forth in their medical records and other documents, correspondence and statements associated with their individual cases.

2. *Finding.* Each member named has been found to be not physically qualified for active duty as a member of the Naval Reserve. Each finding has been reviewed by the Judge Advocate General under the provisions of 10 U.S.C. 5148 and no legal objection interposed.

3. *Disposition.* Each member listed shall be transferred to retired status as provided for in 10 U.S.C. 1004. The Chief of Naval Personnel is directed to take appropriate action to effect this disposition.

Identification/Service